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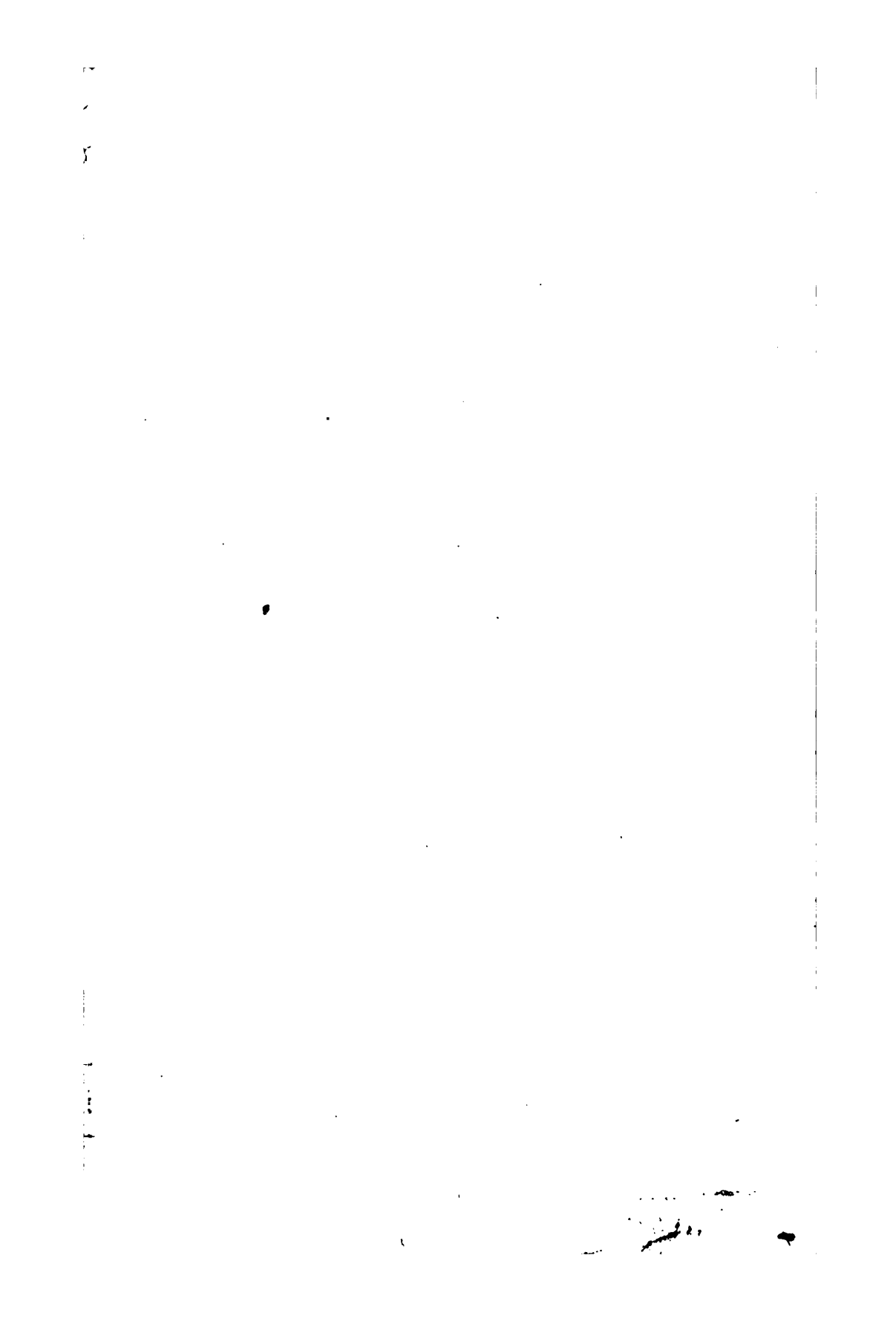


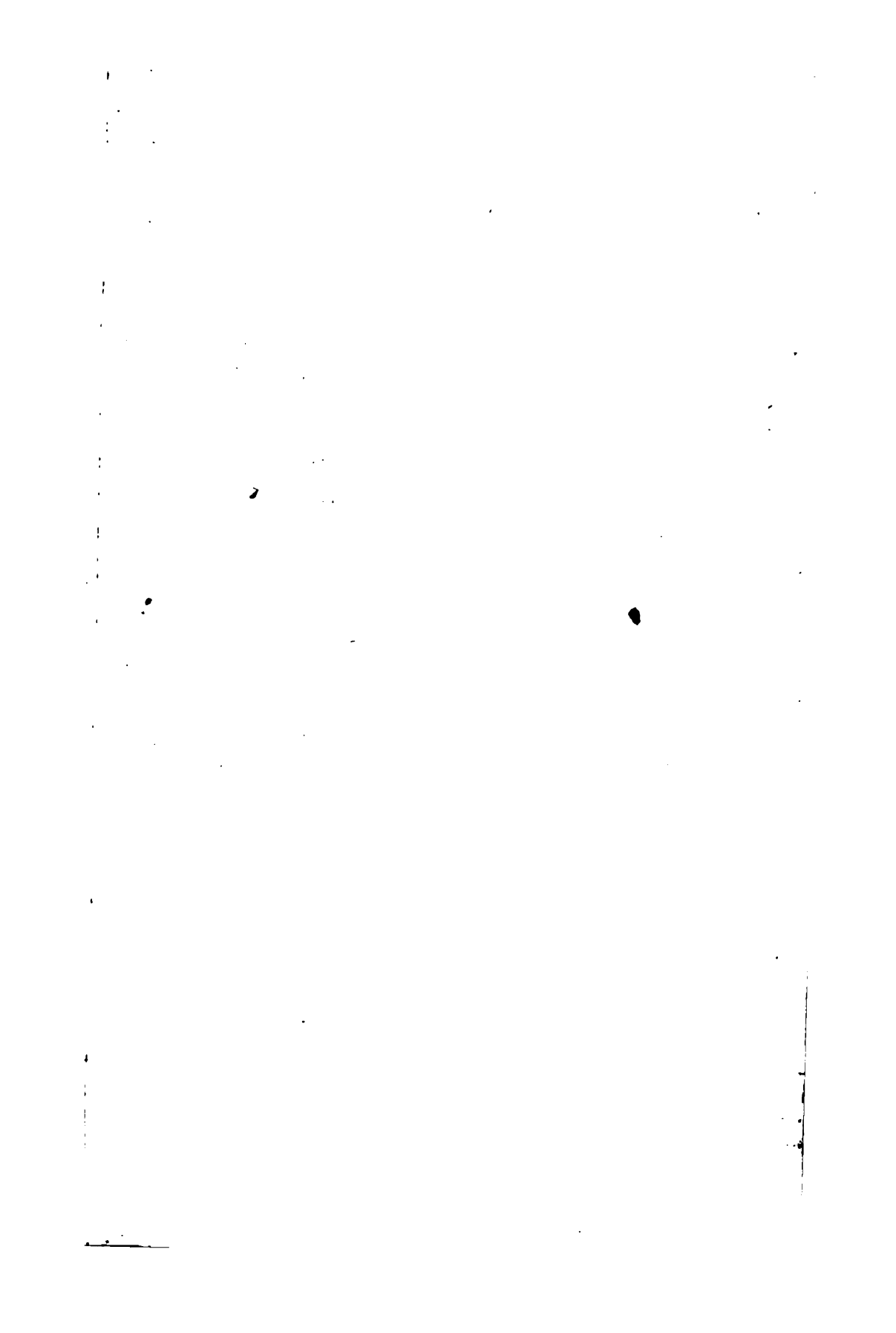
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HANDYBOOK
OF
THE LAW
RELATIVE TO
MASTERS, WORKMEN, SERVANTS,
AND APPRENTICES,
IN ALL TRADES AND OCCUPATIONS.

25

MOREOVER, there are workmen with thee in abundance, hewers and workers of stone and timber, and all manner of cunning men for every manner of work. Of the gold, the silver, and the brass, and the iron, there is no number. **ARISE THEREFORE**, and be doing, and the **LORD** be with thee.—1 **CHRON.** xxi. 15-16.

HANDYBOOK
OF
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RELATIVE TO
MASTERS, WORKMEN, SERVANTS,
AND APPRENTICES,
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WITH
NOTES OF DECIDED CASES IN ENGLAND, SCOTLAND, AND IRELAND.

AND
An Appendix of Acts of Parliament,

CONTAINING, AMONG OTHERS,

"THE ARBITRATION ACT" OF 1894, AND "COUNCILS OF CONCILIATION ACT" AND
"MASTER AND SERVANT ACT" OF 1887.

TOGETHER WITH
FORMS OF PROCEEDINGS AND PROCEDURE,
TO ENABLE MASTERS AND WORKMEN TO ESTABLISH COURTS OF CONCILIATION
AND ARBITRATION, AND TO CARRY ON THE SAME.

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WILLIAM MACKENZIE:
LONDON, EDINBURGH, GLASGOW, AND DUBLIN.
1868.

H A N D Y B O O K

OF

THE LAW

RELATIVE TO

MASTERS, WORKMEN, SERVANTS, AND APPRENTICES.

INTRODUCTION.

THE statutory law with regard to master and servant has been allowed for more than a century to grow up without any attempt having been made, except, perhaps, in one particular instance (*a*), to give it system or method. So much is this the case that, even governed as we are by one Parliament, dealing with matters of imperial application and national importance, it is often doubtful whether some of the Acts passed are intended to apply to the United Kingdom, or only to a part of it (*b*); while with regard

(*a*) The Merchant' Shipping Act, 17 & 18 Vict. c. 104, and subsequent Acts.

(*b*) Mr. Sheriff Barclay, in his evidence given before a Select Committee of the House of Commons, on 13th June, 1866, stated, "I may mention to the Committee, as being well worth noting, the three statutes I have taken note of; namely, the 20 Geo. II. c. 19, passed in the year 1747, the 6 Geo. III. c. 25, passed in the year 1776, and the 4 Geo. IV., passed in the year 1823, extended to some other trades by the 10 Geo. IV. It so happens that all these statutes are put down in our leading treatises on justices, which Sheriff Tait, of Edinburgh, published in the year 1828, as not being applicable to Scotland, and I strongly believe that they were never intended

to be applicable to it. I never knew a case under the 20 Geo. II. or 6 Geo. III. The statute of 4 Geo. IV. is the one which we act upon; and it is a remarkable fact that, although convictions without number have gone up to our high Criminal Court of Justiciary, there never yet has been taken that objection that they do not apply to Scotland; but I think that any Scotch lawyer reading the statute of the 4 Geo. IV., would say that it was never intended to apply to Scotland. Of course the Committee know better than I that an Act is considered to be a British Act, unless it is said that it does not apply to Scotland negatively, or unless affirmatively it is said that it does apply only to England and Ireland, or some particular locality."—Minutes of Evidence, p. 14.

to others it takes frequently all the knowledge and acumen of Westminster Hall, the Parliament House, and the Four Courts to determine how far, if at all, some statutes or portions of them have been repealed or superseded, and what effect, if any, should be given to provisions liable more or less to the common reproach of being a mere *cento* of immature legislation.

The Acts which have been passed since the Union with regard to the relations between employers and employed, from their mixed and, in many instances, confused character, furnish very indifferent materials for a systematic treatment of the law relating to this important subject; and there is consequently much need for some large and comprehensive measure, dealing with it as a whole, which could be worked uniformly in all parts of the kingdom. The great defect of our legislation consists in the readiness with which on all occasions we have recourse to make-shift remedies in dealing even with radical evils—a mode of proceeding which springs naturally from a state of things in which no change, however desirable, can be accomplished without incessant and clamorous demands, frequently perhaps peremptorily preferred, but always reluctantly conceded; leading in many cases to results similar to that which one might suppose to be obtained from the action of some complex machine worked by two opposing forces, in which it would be the province of a certain class of operators to move it in one particular direction, while a second set, by a series of ingeniously devised grooves, contrived that every point as it presented itself should be morticed and tenoned in another; so that when at last, after having been planed, squared, and put together, the article comes from the hands of its manipulators, it is discovered, in too many instances, to be the embodiment of almost everything but what each of them expected, and they are astonished to find that their efforts have merely resulted in the creation of an image of “iron, clay, and brass,” similar to that spoken of by the prophet Daniel, liable to be broken to pieces, and to become “like the chaff of the summer threshing-floors” (c). Theoretically it is, no doubt, a very excel-

(c) In course of the lively conversation of the *bons vivants* assembled at the celebrated dinner in London referred to by Boswell in his “Life of Johnson,” at which he and the doctor were guests, “in a company where were present sev-

eral eminent men,” whom he declines to name, and at which it may be remembered that the doctor insisted that the dog of Alcibiades had a docked tail, the following view is given by one of the interlocutors of the passage of

lent thing, this double impelling and repelling action—this so-called building up of the new, while you are pulling down the old—dovetailing the ancient into the modern parts of the structure—pruning the branches, instead of lopping them off or digging up the tree itself by the roots. *Festinare lente** may be safe policy, and sure in the end; but there can be little doubt that the system has landed us in a mass of most heterogeneous laws, to codify and systematize which would almost require another Justinian to find us a second Tribonian, Theophilus, and the rest. The schools of Berytus and Constantinople would have ample employment and kindred work in expurgating, arranging, and codifying the multifarious enactments and antiquated customs which go to form the laws of the British empire.

Within the last few years general attention has been directed to the unsatisfactory nature of the legal relations between employers and employed—to a state of things, in fact, which, to use the emphatic language of Lord Ormidale (d) in speaking of the condition of the Court of Session, amounts to a public scandal. The alarming extent, besides, to which disputes between masters and workmen have been carried in this country, naturally suggested the inquiry how far the evils resulting from them could be met by legislative enactment. Never, perhaps, in the annals of trade has there occurred such a number of strikes in almost every branch of it, as have taken place within the last two years; and seldom have they continued in individual cases for such lengthened periods. At no time were they so likely as they are now to cause the forfeiture of that remarkable pre-eminence in the world's industry, so nobly won for us by the skill and energy of our forefathers. Thousands of workmen and their families must have suffered privations of which we can never know the extent; while many employers have doubtless sustained losses

an Act of Parliament through the House of Commons:—"Though an Act which has been ably opposed passes into a law, yet in its progress it is modelled, it is softened, in such a manner, that we see plainly the minister has been told that the members attached to him are so sensible of its injustice or absurdity from what they have heard, that it must be altered."—*Life of Johnson*. London: Routledge, 1856. Vol. iii. p. 157.

(d) One of the judges of the Supreme Courts of Scotland, and previous to his elevation to the Bench, sheriff of the county of Renfrew. The present movement for the reform of the Court of Session, resulting in the introduction of a parliamentary measure on the subject, is mainly owing to the uncompromising and decisive denunciation by Lord Ormidale of the evils of the existing system of procedure.

* *Lit.* "To hasten slowly."

which it may take years of exertion to repair. The inveterate character of these disputes would seem in a great measure to have arisen from the want of some adequate machinery in our judicial system, by which the questions involved could be fairly determined. Employers and employed have been hitherto in the position of litigants without a forum to decide their differences. Each blindly held particular views upon the subject of their contention, and in most cases lent a deaf ear to suggestions of compromise. The result of all their contests, however, has been that both suffered. One might eventually conquer through superior means of endurance; but, as in a well-contested prize fight, each combatant left the field considerably the worse for the encounter. It seems strange that in a country which prides itself upon the wisdom of its laws, the extent of its manufactures, and the strong common sense of its people, there should not have been devised some method by which these ruinous disputes could have been settled, except strikes and lock-outs. Our mercantile jurisprudence is as nearly perfect as any body of legal rules can reasonably be expected to be, and it readily adapts itself to the various changes required by an increasing trade and extending commerce. In social and political economy we have made remarkable progress; but the great field of industrial legislation has been as yet either neglected or mismanaged. We have, indeed, numerous Acts of Parliament, forming almost a penal code, with regard to the liabilities of workmen, servants, and apprentices for breach of contract, and others which, to some extent, relate to the obligations of employers; but they fail to constitute as a whole a comprehensive system by which the rights and interests of the parties can be satisfactorily determined. It is otherwise in France, where, for a considerable period, courts have been in existence, specially constituted and organized, for hearing and determining differences between workmen and their employers. These tribunals are called the "*Conseils des Prud'hommes*." By the enlightened legislation of the first Napoleon and his successors, these have been remodelled, and adapted to meet the various exigencies of trade and manufacture in France. The members are elected by the masters and workmen, both sides being equally represented. They have been found to work admirably, and there can be no reason why they should not also do so in our own country, remarkable as it is for the facility with which it

adapts all practical ideas to its own social wants and institutions. Accordingly, in the beginning of February, 1867, a bill was introduced into the House of Peers by Lord St. Leonards, intituled "An Act to Establish Equitable Councils of Conciliation to adjust differences between Masters and Workmen." In the all-absorbing topic of parliamentary reform, the introduction of this bill did not attract that degree of attention which its importance deserved. It is confessedly based upon the principle of the Courts of *Prud'hommes* in France; and should it, after being improved by the suggestions of practical experience, take root as one of the institutions of this country, it will be of immense advantage to the working classes, as well as to their employers.

The legal relations between masters and workmen have, by the passing of that Act (e), entered upon a new phase—one, it is to be hoped, which will be more in harmony with the progress of society than was the condition of the law during the last half century. No work has yet appeared which professes to be devoted to the exclusive treatment of industrial legislation, as affected by the laws both of England and Scotland, with the view of bringing the involved and scattered enactments embraced in it into something like a compact and systematic form, to answer the requirements of the lawyer, without being too technical for the purposes of unprofessional men. It is proposed to supply this desideratum in the present treatise. The difficulty of traversing a field so extensive as that which it is necessary to examine, so as to avoid unnecessary details, and at the same time to unfold what it is really essential to know, will only be apparent to him who has gone over the numerous Acts which require more or less to be noticed. After giving the matter careful consideration, it has been deemed best, in order to obtain a clear view of the whole course of civil and criminal industrial legislation, to seek some stand-point situated as near as possible to the centre of the cycle comprehending the legislation from the union of the two countries to the present time. Searching for such a "coigne of vantage," the eye naturally rests upon the Arbitration Act of 1824 (f) as being, both with regard to the period of time and the nature of the Act itself, a suitable point from which to take a comprehensive survey of the subject.

The principle of conciliation in reference to disputes between employers and employed being an innovation upon our ancient

(e) 30 and 31 Vict. c. 105.

(f) 5 Geo. IV. c. 96.

practice, and clearly an offset from a French stem, affords a convenient basis for prosecuting an inquiry rendered necessary by the inauguration in our own country of a new system modelled upon an institution which has long been a favourite of the law of France. It is therefore proposed to treat the subject in the following order:—

- I. To explain the constitution and powers of the Courts of *Prud'hommes* in France, which have the cognizance of disputes and differences between masters and workmen in that country, as well as to show the kindred functions and jurisdiction of the *Juges de Paix*, or Justices of the Peace.
- II. To explain the nature, constitution, and functions of the Courts of Justices of the Peace in England and Scotland, and their jurisdiction and powers in questions between employers and employed.
- III. To show the state of the British statutory law, civil and criminal, affecting masters, workmen, servants, and apprentices, prior to 1824.
- IV. To show the progress of industrial legislation, civil and criminal, affecting the same parties since 1824, and up to the passing of the "Master and Servant Act, 1867."
- V. To notice the practical working of Courts of Arbitration and Conciliation, and the best mode of establishing and conducting such courts either, 1st, extrajudicially; 2nd, under the Arbitration Act of 1824; or, 3rd, under the Councils of Conciliation Act, 1867.

It is apprehended that this mode of treatment is comprehensive enough to include all that it is really necessary to exhibit; and that for a book which is intended to be useful, not merely to the professional but to the non-professional man, the arrangement is sufficiently systematic to insure clearness both of connection and elucidation, besides giving the power of contrasting the old system of procedure with that new and, it is to be hoped, better method which seems destined to replace it.

PART I.

COURTS OF PRUD'HOMMES, AND OF Juges DE PAIX, OR JUSTICES OF THE PEACE, IN FRANCE.

CHAPTER I.

I.—CONSTITUTION AND POWERS OF THE COURTS OF PRUD'HOMMES IN FRANCE.

THE term *Prud'homme* is derived from the Latin words *prudens* Courts of Prud'hommes in France. and *homo*, signifying a prudent man. The court seems to have been created so far back as the year 1285, in the reign of Philip le Bel (a). It was constituted by a resolution of the city of Paris in the following terms:—"That twenty-four Prud'hommes of the city of Paris shall be elected to sit in the Civic Hall, on the requisition of the Provost and Magistrates, to advise in cases between the citizens, and who shall go with the Provost and Magistrates to the masters, the King, or elsewhere in Paris, or furth thereof, for the good of the community" (b). In 1452 a court was established at Marseilles called *Prud'hommes-Pêcheurs*, to judge in all disputes and differences between and among fishermen and their employers (c). The powers of this court were confirmed by Louis XI. and by subsequent French monarchs. It exists at the present day, but it is distinct from the ordinary Courts of *Prud'hommes*. In 1464 a court was also constituted in Lyons, to regulate the disputes of merchants frequenting the fairs of that city (d). It is uncertain from what source the French derived their notion of these courts. They undoubtedly borrowed the designation of the members from the Romans, but certainly

(a) Lingée, *Legislation Industrielle*. Paris, 1853.

(b) *Manuel des Conseils des Prud'hommes*. Par C. B. de Villiers. Paris, 1845.

(c) *Dictionnaire des Prud'hommes*. Par A. Durut. Paris, 1846.

(d) Mollot, *La Justice Industrielle*. Paris, 1847.

Mechanical
arts despised
by the Ro-
mans.

not the idea of its constitution, for that remarkable people despised the merely mechanical arts, which they took no pains to cultivate themselves, although they pocketed the profits earned therefrom by their slaves. They left the most lucrative handicrafts to be carried on by strangers; and instead of framing special regulations for the benefit of trade, all disputes between foreigners and the inhabitants were determined by the *prætor peregrinus*, by rules of law different from those enacted for the settlement of questions among the citizens themselves (e).

Abolition of
Corporations
and Guilds
in France.

Up to the period of the Revolution the operations of trade in France were considerably hampered by Corporations and Guilds, or Brotherhoods, by which the powers and privileges of employers were fostered to an extent which amounted to actual tyranny (f). Apprentices were considered as being the property of their masters; while the difficulties which beset them after becoming journeymen in endeavouring to procure admission to the Guilds were such, that in very many cases they were forced to remain mere workmen for life (g). In 1791, however, all Corporations and Guilds were abolished in France, and absolute liberty of trade and industry was conferred upon the working classes, subject to certain rules, which were administered by the prefect of police in Paris, and by the mayors of the provincial towns. It was not, however, until 1806 that Courts of *Prud'homes* could be said to have been fully or efficiently constituted. In that year the Emperor Napoleon paid a visit to the city of Lyons, famous for its silk manufactures, on which occasion the municipal authorities represented to him the great advantages which had resulted from the establishment, in 1791, of a court composed of both masters and workmen for the settlement of differences in the various industries in the city, but whose powers had been for some years in abeyance. They urgently pressed upon the emperor the propriety of re-establishing that court. Having given the subject mature consideration, he not only consented to do so, but resolved to establish similar institutions in all the manufacturing towns of the empire. This resolution was effectually carried out by the decree of 18th March, 1806, which may be regarded as the palladium of the rights of labour in France (h). This decree

Courts of
Prud'homes
established
in Lyons,
1791.

(e) Mackeldey, Manuel de Droit
Romain. Bruxelles, 1837.

(f) Dictionnaire des Prud'homes.

(g) Lingée, Legislation Industrielle.

(h) La Justice Industrielle des
Prud'homes. Par Mollot.

was followed by those of 11th June, 1809, and 3rd August, 1810, which completed the legislation of the first Napoleon upon this important subject. Previous to 1844 Paris was without a Council of *Prud'hommes*, on account, as it was said, of the practical difficulties which it was expected would arise from the great variety of the branches of manufacture carried on there. Under the government of Louis Philippe, by ordonnance of 29th December, 1844, and 9th June, 1847, four Councils of *Prud'hommes* were specially created for the Department of the Seine: the first judges in all questions relative to the industry of metals and cognate branches; the second with regard to tissues and relative branches; the third takes cognisance of all disputes in the industries dependent upon chemical products; while the fourth presides over miscellaneous industries. Each branch of these trades has a certain number of representatives in the council. For instance, that relative to metals had a council of fifteen members, appropriated as follows:—

	Masters.	Workmen.	Industry of metals
1st. Mechanics, machine-makers, founders, boiler-makers, locksmiths, and coachmakers,	1	1	
2nd. Goldsmiths, manufacturers of plated articles and jewellery,	2	2	
3rd. Philosophical instrument makers, opticians, musical instrument makers, and watch and clock makers,	2	2	
4th. Workers in bronze, engravers, gilders, die-sinkers, tinsmiths, &c.,	2	1	
5th. Gunsmiths, surgical instrument makers, cutlers, &c.,	1	1	
	8	7	
Total,		15	

The other industries are grouped in a similar manner.

The number of councils in France in 1849 was seventy-four, and they are at present probably about the same. The reigning emperor of the French has consolidated and improved the wise provisions of his imperial uncle by the decrees of 6th June, 1848, and 1st June, 1853 (i).

The object of the institution of these courts was to provide a cheap and speedy method of settling disputes of almost daily occurrence between masters, workmen, and apprentices, as well as between merchant manufacturers and masters of workshops. Three things were kept in view:—First, to provide a tribunal composed of judges skilled in the matters that were to be decided; second, to insure confidence in the court on the part of the litigants by

(i) Lingée, Legislation Industrielle.

Practition-
ers of the
Law exclud-
ed.

Statement
of M. André,
President of
Council of
Troyes.

its embracing an equal representation of the elements of capital and labour, and by the selection as judges of parties of character and standing in the community; third, to make the conciliation of the litigants the first and paramount object of the court. No practitioners of the law are allowed to appear on any pretence whatever (j). When it is considered how many disputes arise from misunderstandings as to matters of fact, or from erroneous ideas of right and wrong, and how frequently anger or prejudice enters into the difference of parties so mutually dependent upon each other as employer and employed, it must be obvious that there is considerable room for a court so constituted to remove prejudice, repress passion, and to show to the contending parties where truth and justice really lie. Indeed, it has been found that about ninety per cent. of the cases brought before these tribunals are settled in the Court of Conciliation. The functions performed by the *Prud'hommes* cannot be better expressed than in the words of M. André, president of the Council of Troyes:—"In every case," says he, "the council endeavour to discover the truth—to find out from what side the wrong comes. Sometimes by observations addressed to the masters the latter are induced to modify their demands. By remonstrances, friendly but firm, they cause the workmen to see the unreasonableness of unfounded pretensions. Both are reminded of their reciprocal duties—the masters that they ought to forego everything tending to humiliate, to overlook a first offence, to be mild in command and moderate in reproof, and to respect the position of men whose lives are consecrated to toil. To the workmen they recommend deference to the employer, who by his wealth and enterprise furnishes them with the means of earning a comfortable subsistence; regularity and care in performing their work; and a faithful and zealous use of their master's time. It is by approaching cases in this spirit that the *Prud'hommes* succeed in getting the parties to see their complaints in their proper light, to retire from the court conciliated, and disposed to resume relations which have thus been only temporarily disturbed" (k).

The main object of these institutions may shortly be stated to be the decision of disputes between masters and workmen,

(j) Dictionnaire des Prud'hommes.
Par A. Durut.

(k) Lingée, Legislation Industrielle.

Mollot, De la Compétence des Prud'-
hommes: Paris, 1842. Manuel des
Conseils des Prud'hommes.

or between the workmen themselves. The *Prud'hommes* also exercise certain specific functions of an administrative character.

The 6th article of the law of 1806 thus describes their judicial functions :—"The *Conseil des Prud'hommes* is established for the purpose of terminating, by way of conciliation, the little disputes which daily arise, whether between the masters (*fabricants*) and workmen (*ouvriers*), or between the foremen (*chefs d'atelier*) and the ordinary workmen (*compagnons*) or apprentices (*apprentis*)."

Their jurisdiction is strictly confined to manufactories (*fabriques*) and those engaged in them as masters or workmen.

It is obvious from the definition above given of the functions of the *Prud'hommes* that it would be impossible to enumerate all the different kinds of causes submitted for their judgment. The following cases are given by M. Mollet as being among those of most frequent occurrence (l) :—

A master brings a complaint against one of his workmen—

Description of the Causes submitted to Judgment of Prud'hommes
Complaints by Masters against the Workmen.

For having inflicted upon him some injury by contravening a law or regulation ;

For having refused to fulfil a contract either actually entered into or implied by the custom of trade as to work, time, or price ;

For having purloined or injured raw materials given him to work upon, or committed other offences of a like nature.

On the other hand, the workman complains—

Complaints by Workmen against the Masters.

That his master has injured him by contravening some particular law or regulation ;

Or that he has dismissed him at an improper time (*temps inopportun*), contrary either to actual agreement or established usage ;

Or that he keeps back the whole or part of his wages ;

Or that he refuses to give him a "*congé d'acquit*," or certificate of his having fulfilled his engagements, or to return him his "*livret*" (m).

As regards disputes of workmen *inter se*, they are less numerous than those between masters and workmen. Amongst the most frequent are questions—

Disputes of Workmen inter se.

(l) Mollet, De la Competence. Same Author, Sur la Justice des Prud'hommes.

man is obliged to carry, showing his name, age, birthplace, trade, &c., and which he must deliver to a new master on first entering his service.

(m) This is a book which the work-

As to the division of wages between two or more workmen for the same piece of work ;

The execution of work which two or more of them have been employed upon ;

The embezzlement of raw material or tools (n).

A great many differences also arise with regard to contracts of apprenticeship, which are entered into by those who wish to learn a particular trade, sometimes with the masters, but more frequently with the head workmen (*chefs d'atelier*), or with the ordinary workmen engaged in it.

Disputes as to Rates of Wages not within the competency of the *Prud'homes*.

With respect to disputes as to the rate of wages to be paid to the workmen, they are of course not within the legal jurisdiction of the *Prud'homes*; that is to say, the *Prud'homes* have no legal power to enforce their decisions with regard to them. But it would appear, as might be expected, that they are frequently appealed to by masters and workmen who cannot agree as to the rate of wages, and that their decision is often accepted, or at least that their advice tends to modify unreasonable demands on both sides (o).

Jurisdiction of the *Prud'homes* in matters of Discipline in Workshops.

Besides their ordinary jurisdiction the *Prud'homes* have also power to make visitations to all manufactories and workshops within their jurisdiction, with a view to see that the rules enacted with regard to them are fully and fairly carried out. In addition to their judicial functions they act as a Board for protecting the interests of inventors of designs. The party who wishes to have a design protected incloses a sketch of it in a sealed envelope, which he delivers to the secretary of the court, who stamps it with the official seal. He also sends a declaration, in which he states for what period he reserves to himself the right of property in the design. The secretary draws up a short report, which he enters in a register, and gives a certificate of registration to the applicant, without any charge. A register is also kept of trade marks. A model of the mark must be lodged with the secretary, who draws up a similar report and grants a certificate, in the same way as is done with regard to registered designs. The court also supervises the dealings between manufacturers

Designs of Inventors and Trade Marks.

(n) The French manage, by the simple intervention of the *Prud'homes*, what it has taken us numerous special Acts of Parliament to effect; among

others, the Embezzlement Act, 17 Geo. III. s. 56.

(o) Lingée, *Legislation Industrielle*. Dictionnaire de l'Economie Politique.

and masters of workshops. Every master receives what is called "a double book of acquittance" for each branch of trade carried on by him, in which he enters the details of the work performed for the manufacturer. An entry is made in a register of the number of books delivered, which is signed by the master. The manufacturer is entitled to have this book at any time, but he must always return it when he sends work to be performed, under a penalty (*p*).

It will be obvious from this general statement of the powers and functions of the court, that it is calculated to produce a great deal of benefit. There is a speedy, cheap, and satisfactory distribution of justice; the watchful supervision of workshops and manufactories; the encouragement given to ingenious workmen to produce designs; and the security afforded to manufacturers by the registration of their trade marks. We need not be surprised that the French surpass us in designing, when their workmen are afforded such facilities to enable them to excel in that department of industry. When we ask ourselves what corresponding provisions we have in our law to those embodied in the decrees constituting the Courts of *Prud'hommes*, we are obliged to confess that we have none that meet the case—that, in fact, we have as yet failed to organize a comprehensive system of industrial legislation.

Having shown generally the constitution and powers of the court, we shall now direct attention specially to its composition and functions. The council is established by an Imperial decree, following on the advice of a Chamber of Commerce, or of a Chamber of Arts and Manufactures. The decree of institution, of course, determines the number of members, which must be at least six, exclusive of the president and vice-president, who are named by the emperor, and who do not require to be taken from the class from which the other members are drawn (*q*). Until the Revolution of 1848 the law required that the number of master manufacturers should always exceed that of the workmen by one, and the members of the council chose a president and vice-president from their own number. This was defended on the ground that, in order to guard against a "dead lock," it was necessary that there should be a numerical preponderance on the

Advantages
of the
System.

Constitution
and Functions
of
Court.

Effect of Re-
volution of
1848.

(*p*) Lingée, *Legislation Industrielle*.

(*q*) *Dictionnaire des Prud'hommes*. Durut.

Changes in
1853.

Mode of
Election of
Members.

Qualifica-
tions.

side of the masters or of the workmen, and that it was safer that it should be on that of the masters. After the Revolution of 1848 the number was equalized, and this arrangement has been maintained by the law of 1853 (*r*). The president and vice-president remain in office for three years, and are eligible for re-election. The members of court are elected by the patrons (that is, merchant manufacturers), masters of workshops, foremen, and workmen, all belonging to the special industry or industries over which the court is to preside. The merchant manufacturer must be twenty-five years of age, and have taken out his patent as such at least five years previously, and have been domiciled for the same period within the jurisdiction of the court. The masters, foremen, and workmen must also be twenty-five years of age, and have exercised their trade for five years previously, and have resided within the jurisdiction for three years. They must all be able to read and write. The mayor of the commune, assisted by two assessors—one chosen by the masters and workmen, the other by the manufacturers—makes up the list of electors. It is then sent to the prefect, who draws up what is called the electoral list. If there are any objections to its accuracy, they are heard before the Council of the Prefecture, or the civil tribunals, according to distinctions established by the law relative to municipal elections (*s*). The merchant manufacturers name their members in an assembly presided over by the deputy justice of the peace. The masters, foremen, and workmen elect their members at a meeting of which the justice of peace is himself chairman. A minute of the proceedings is drawn up, and if there is no objection the president declares those parties to be duly elected *Prud'hommes* who have the greatest number of votes. The requisites for serving in the council are—to have attained the age of thirty, to be able to read and write, and to be qualified as an elector. In case of equality, the party who is senior in years is preferred. One half of the council goes out by ballot every three years; but those who retire are eligible for re-election. The prefect calls the electors together to make a new election. Any one nominated in place of a retiring member holds office only for the period unexpired of the other's time.

The council is composed—1st, of the elected members; 2d, of

(*r*) Lingée, Legislation Industrielle. Law of 1853.

(*s*) Manuel des Prud'hommes. Villiers.

a president and vice-president; 3d, of a secretary; 4th, of a clerk; and 5th, of officers of court. The president directs the proceedings, interrogates the litigants and witnesses, corresponds with the civil authorities, whether judicial or administrative, and signs the minutes and judgments and depositions of witnesses. The vice-president acts in absence of his chief. The secretary writes the minutes and judgments, the depositions of witnesses, and all extracts required. He records the decrees of the court in an appropriate register, and is the custodian of all the records, including the designs of inventors and models of trade marks. The clerk assists the secretary in his labours. The officers attend the sittings, and execute the judgments of the court. The council consists of what may be called an outer and an inner chamber. The first is called the Special Court, or Court of Conciliation, before which all cases come in the first instance; the second is known as the General Court, or Court of Judgment. The former court consists generally of two members. In places where the members are fewer than ten, the court sits every alternate day. Where, however, it exceeds that number it sits every day. As already mentioned, if the Outer Court does not succeed in conciliating the parties, the case is remitted to the Inner Chamber, by which it is at once taken up. This division of the court is composed of not less than four members, one half of whom represent workmen. It meets at least once a week. The expenses of the whole establishment are defrayed by the locality in which the court is situated. The members of court who represent the working element are paid, but not those who are named by the patrons. They are regarded as public officers, and have the privileges and are liable to all the disabilities of other judges.

They have no costume, but wear a silver medal suspended by a ribbon, having the name of the district in which they sit engraved upon it (t).

The mode of procedure is regulated by the 29th Article of the Decree of 11th June, 1809, which provides "that every merchant manufacturer, every master of a workshop, every workman, journeyman, and apprentice, called before the *Prud'hommes*, upon a simple letter from the secretary, will be held bound to appear personally upon the day and hour, and at the place fixed,

(t) Lingée, *Législation Industrielle*. Mollot, *La Justice Industrielle*.

Composition
of Council.

Mode of Pro-
cedure.

and can only have a substitute in case of absence or illness, when he may be represented by any of his relatives, or by some party engaged in the same trade, by written mandate." If the person so cited fails to appear, a formal citation is served upon him by an officer of court at his ordinary domicile. When the defender appears either in virtue of the letter from the secretary or the subsequent citation, the parties will, if there is no objection stated and sustained to the competency of the court, be heard in explanation of their grounds of action and defence. They are liable to certain penalties, and even to imprisonment, for contumacy and contempt of court. If the parties are conciliated, the secretary draws up a minute, an extract of which has the effect of a decree. Should, however, the court fail in getting them to agree, the minute of procedure bears the propositions made by the court in the way of adjustment, and the refusal of the parties. An extract of this is given to the party demanding it, to be produced to the general court. The special court, however, has power to take such steps as are necessary to keep matters *in statu quo* until the final decision of the case (*u*). When forgery is alleged or the writings founded on are denied, the president notes the plea, marks the document, and remits the case to the proper legal tribunals to judge of it. If the defender does not appear after the first citation, the court orders him to be served with another requiring him to attend upon a particular day. If either of the parties is absent upon that day, and no substitute is in attendance, the judgment is given by default; without prejudice, however, to the case being re-heard within three days after intimation is made by the officer to the party of the judgment pronounced. The application made for a re-hearing must state the cause of non-appearance, and it will be considered upon the first sitting of the court, notification being duly given to the opposite party. If the court, however, when pronouncing judgment by default, be aware itself, or be informed by any neighbours or friends of the defender, that he has been unable from any sufficient cause to appear, it may fix such period as may seem proper within which the party can be re-heard. Should the case, however, go by default a second time, it cannot again be considered (*v*).

Procedure on
appearance.

Procedure in
absence.

(*u*) Lingée, Legislation Industrielle.

(*v*) Loi sur les Conseils des Prud'hommes. 1853.

When the court is unable to decide the case upon the statements and admissions or productions of the parties, or by a personal visitation and inspection, an early day will be appointed for the parties to bring forward their witnesses. The depositions of the witnesses are reduced to writing, and signed by them and by the president and secretary, when the judgment of the court is subject to appeal; but in cases where there is no appeal a mere note of evidence is all that is taken. The pursuer or defender can at any stage of the case refer the whole, or part of it, to the opposite party, and the court is also entitled to examine either of them upon oath. At the conclusion of the proof the case is generally decided at once. Judgment is rarely postponed beyond the next court-day. When the decree does not exceed £8 6s. 8d., irrespective of costs, the judgment is final; but above that sum there is an appeal to the Tribunal of Commerce, but not after three months (*w*). Imprisonment could have followed upon any judgment exceeding the above sum, the duration of which, however, was limited to five years; but in the course of last year imprisonment for civil debt was abolished in France (*x*). Where there are more defenders than one sued under a joint obligation, they are liable *singuli in solidum*, each being held responsible for the whole. If a judgment by default is not executed within six months, it cannot afterwards be put in force.

The following is a table of the fees payable to the secretaries of the Courts of *Prud'hommes*, to the registrars of the Tribunals of Commerce, and to the officers of court:—

	s.	d.
Letter intimating complaint and fixing diet of appearance, . . .	0	3
Each extract of twenty lines to the page, . . .	0	4
Each extract for general court where parties have not been conciliated, . . .	0	8
Officers' fees for each citation within six miles, . . .	1	2
Above six miles, . . .	1	7
Officers' fees for intimation of judgment, . . .	1	7
Travelling above six miles, . . .	2	0
Officers' fees for copying each necessary document connected with judgment, per page of twenty lines, . . .	0	2
Report upon deposit of model of trade mark, . . .	2	6
Report by registrar of Tribunal of Commerce of deposit of model of trade mark, . . .	2	6

(*w*) Mollot, De la Competence des Conseils des Prud'hommes.

(*x*) *Vide* Law of 22nd July, 1867. The first article of this law declares that imprisonment (*contrainte*

par corps) is abolished *en matière commerciale, civile et contre les étrangers*.

The second article provides that it is to be maintained in matters criminal

The secretary has a salary besides these fees, but he is obliged to supply all the registers, stamped paper, &c., and to give out all the extracts and certificates without any charge, under a penalty.

Witnesses who are workmen are generally paid a day's wages for their attendance, or two days' wages if they have to put a person in their place. Those having no profession are allowed 1s. 8d., besides a reasonable sum for travelling expenses if they have come from a distance.

Statistics as
to causes
decided from
1806 to 1842.

From 1806 to 1842 inclusive, there had been 184,574 cases submitted to the jurisdiction of the *Prud'hommes*. Of these the *Bureau de Conciliation* decided no less than 174,487, leaving 10,027 for the number of those referred to the *Bureau Général* for compulsory decision. Of these latter, 4849 were withdrawn by the parties, and upon 5178 judgment was passed; of these, 1904 were decided subject to appeal, and 3274 were disposed of without appeal. In all of them, however, except 190, the parties remained satisfied with the judgment of the *Prud'hommes*.

Courts of
Prud'hommes
in Belgium.

Councils of *Prud'hommes* were also established by the first Napoleon in Belgium, one at Ghent and the other at Bruges, by Imperial Decrees of 1810 and 1813 respectively.

In 1828 petitions were presented to the Belgian government from other towns in that country, for the establishment of similar councils. It was found, however, that this could not be done constitutionally without passing a special law for the purpose. A law was accordingly enacted in 1842, authorizing the government to create councils in seventeen specified towns; and in 1843 and 1845 decrees were issued for their establishment in other places besides these. They were only, however, actually organized in twelve places, of which, strange to say, Brussels was not one. The laws and regulations under which these councils are conducted are in the main the same as those established by the Imperial French law and decrees.

Courts at
Aix-la-Cha-
pelle and
other places.

Besides the councils constituted in France and Belgium, the first Napoleon created ten others in different parts of the then French empire, viz., at Aix-la-Chapelle, Cologne, Crevelt,

and correctional, and in those of simple police.

A bill has lately been introduced into the House of Lords by the lord chancellor (Cairns), to abolish imprisonment for debt. It is intituled "An

Act to abolish arrest on final process in civil actions in England, and otherwise to amend the laws relating to judgments, decrees, and orders, and to arrest." It does not extend to Scotland or Ireland.

Düren, Gladbach, Kaldenkirchen, Leyden, Montjoie, Stolberg, and Rome. After the peace of 1815, Councils of *Prud'hommes* were established by law in several other towns of the Rhenish provinces of Prussia, where they are now called *Tribunaux d'Industrie*. The regulations by which these courts are governed are those of the Imperial French ordonnance of 1806. The principal points on which the present law of France differs from that ordonnance, and from the subsequent decrees of the first Napoleon, are fully set forth in the authorities to which reference has been made.

II.—JUGES DE PAIX, OR JUSTICES OF THE PEACE, IN FRANCE.

In addition to the Court of *Prud'hommes*, there are various other inferior tribunals in France, including that of the *juge de paix*, or justice of the peace. He is, however, a somewhat different individual from his counterpart in this country. The French justice is a paid officer, specially trained and fitted for the exercise of legal functions. He exercises jurisdiction under the *Code de Procedure Civile* and the *Code de l'Instruction Criminelle*. He is, in certain cases, a judge in conciliation *par excellence*—so much so, indeed, that actions cannot in these cases be raised in the inferior courts of law until the defendant is first of all called before him as a *conciliator judex* (y).

According to the language of the French law, justices of the peace are magistrates appointed and paid for the purpose of preventing disputes and differences, and conciliating parties, if possible, before they go the length of engaging in a legal process, and who decide summarily, without the intervention of advocates or solicitors and without expense, questions of trifling importance. They also preside over the tribunals of simple police, and discharge certain ministerial duties in reference thereto (z).

The institution is not of an ancient date, having had its origin in terms of the law of 24th August, 1790, relative to judicial organization. The first article of that law is in the following terms:—"There will be in each canton a justice of peace, who can only be elected among those citizens eligible for the

Juges de paix, or justices of the peace, in France.

Juges de paix are stipendiary magistrates.

Instituted in 1790.

Formerly elected by citizens.

(y) *Code de Procedure Civile*, book ii. tit. 1.

(z) *Barots, Dictionnaire de Droit de l'Empire Français*. Paris, 1867. *Voc* Juge de Paix.

Note.—Justices of the peace were first created in France by Edward I. of England. As presently constituted, however, they date no further back than 1790.

administration of departments and of districts, and of the age of thirty years, without any other conditions of eligibility. The justice of peace will be elected by individual scrutiny, and by an absolute majority of votes, by the actual citizens of the canton reunited in primary assembly." They are now, however, nominated by the emperor.

Now named
by chief of
the State.

By the 85th Article of the Constitution it is provided that they are to be named by the chief of the State, according to an order of candidature, or to conditions regulated by what were called the organic laws. These laws, however, have now no existence, and the justices of peace are consequently named and displaced entirely by the executive. Each justice has a clerk or registrar (*greffier*), who acts in all the cases brought before him; and also an officer (*huissier*) to execute the orders pronounced. There were between 3000 and 4000 justices of the peace appointed in the ninth year of the Republic.

Officers of
court.

Justices of the peace are termed *juges extraordinaires*, on account of their jurisdiction being exceptional, as it embraces only matters specially referred to it by law. When any doubt is likely to arise as to his competency, the justice must, by the 7th article of the *Code de Procedure*, see that the parties confer jurisdiction upon him. They can come before him voluntarily, in which case he may determine the dispute without appeal, if the law or the parties give him power to do so; or subject to appeal, even though he may not be the proper judge in the matter, either by reason of the domicile of the defendant or the situation of the object in litigation being out of his ordinary jurisdiction.

Parties may
appear vol-
untarily
before the
justice.

The declaration of the parties who demand his intervention will be signed by them, if they can write. They can prorogate his jurisdiction, as has been stated, but not in cases to which he is held not competent by law, as, for instance, upon a question of State (a). The jurisdiction of the justices of the peace is of two kinds, *contentious* and *gracious*. The latter (*gracieuse*) we would probably call ministerial. It is contentious when they are called by law to terminate a dispute, whether as conciliators or as judges properly so called. It is gracious when there is no question of terminating a contention, but merely the accomplishment of certain formalities prescribed by law, or the convoking of family councils (b).

They can
also proro-
gate his
jurisdiction.

Jurisdiction
either con-
tentious or
gracious.

(a) Henrion de Pansey, p. 46.

(b) Code de Procedure Civile.

Contentious Jurisdiction.—The law of 25th May, 1838, in extending the competency of the justices of peace, has fixed it within prescribed limits. By article 1 they are competent to all actions purely personal or relative to moveables, without appeal, to the extent of 100 francs; and subject to appeal, to the amount of 200 francs. By article 2 they are entitled to give judgment without appeal in all cases where the value does not exceed 100 francs; and subject to appeal to the extent of the competency of the courts of First Instance, in cases decided by the latter without appeal, that is, to the amount of 1500 francs, in the following matters, viz.:—Disputes between hotel-keepers, innkeepers, or lodging-house-keepers, and travellers or lodgers in furnished lodgings, with regard to their bills, and loss of, or damage done to, effects placed in the custody of the former; disputes between travellers and carriers, boatmen and others, in respect of delays, expenses of route, and loss of, or damage to, the effects of the former, and as to the hire due and injury done to vehicles or horses of the latter. In short, they are competent to such questions as in Scotland are said to arise under the Roman edict *Nautæ Caupones Stabularii* (c), which has been adopted by most of the nations of Europe who recognize the civil law. Its provisions, however, in England are referred to the custom of the realm.

Contentious Jurisdiction.

Judgment final if sum does not exceed 100 francs.

Competent to questions arising under the Roman edict *Nautæ Caupones Stabularii*.

3. The justices entertain actions, to the extent of 100 francs without appeal, and to any extent subject thereto, which relate to the payment of house or farm rents, and in connection with removing from possessions or resiling from leases, founded solely upon default of payment of the rents; and with regard to ejectments, and demands arising out of distress (sequestration) for rents—provided, however, the yearly payment does not exceed in Paris 400 francs, nor 200 francs elsewhere, whether the contract is verbal or in writing.

Extent of jurisdiction in matters of rent.

4. They are also competent to the same extent as mentioned in article 2—that is, to 100 francs without appeal, and 1500 subject thereto—in questions with regard to indemnities claimed by the tenant or farmer for any withholding or loss of possession proceeding from the act or fault of the landlord, when the right to indemnity itself is not in question, as well as to other causes

Questions between landlord and tenant.

(c) "Carriers by water, innkeepers, and stablers," Dig. lib. iv, tit. 9. 1 Domat. 16, s. 6; 1 Stair 13, s. 3; 3 Ersk. 1, s. 28. Jones on Bailments, 103 et seq. Forward, 1 T. Rep. 27. Story, 303, 317; 2 Kent, 592-598.

of loss specified in articles 1732 and 1733 of the *Code Civile*; but the justices are not competent to judge in cases as to losses caused by fires or by floods, except to the extent mentioned in the first article (d).

Actions concerning damages to property.

5. They likewise judge, to the extent of 100 francs without appeal, and to any extent with an appeal—1st. In all actions with regard to damages done to fields, fruits, harvest sheaves, &c., whether the loss has been occasioned by man or beast; and with regard to the pruning of trees and hedges, and the cleansing of ditches, whether used as canals for irrigating purposes or for water-power for mills or manufactories, when the right of property or any right of servitude is not involved. 2nd. With regard to repairs upon houses or improvements upon farms incumbent by law upon the tenant. 3rd. Disputes relative to the engagements of persons employed as labourers by the day, month, or year; questions between domestic servants and their masters, and between masters and their apprentices—without, however, infringing upon the peculiar jurisdiction of the *Prud'hommes*. 4th. Questions relative to the payment of nurses, except as to matters prescribed by the laws and rules of public administration with regard to the *Bureaux* of Nurses of the city of Paris and other cities. 5th. Civil actions for slander and injuries, public and private, whether verbal or in writing, otherwise than through the press, and all actions arising out of matters *in rixa*, injuries by assault, where not provided for by the criminal law.

Questions between masters and servants.

Acts committed within a year.

6. The justices are also competent, subject to appeal, to entertain actions with regard to any acts committed within the year upon water-courses, whether serving for purposes of irrigation or for the water-power of mills or manufactories, without prejudice, however, to the powers of the administrative authority in these matters as determined by law. 1. Interdicts with regard

Possessory actions.

to new operations, and possessory actions with regard to acts committed within the year. 2. Actions concerning boundaries, and those relative to distances prescribed by law, and the particular rules and usages of localities with regard to the planting of trees and hedges where there is no question of title involved.

Actions concerning boundaries and plantation of trees and hedges

3. Actions relative to erections comprehended within article 674 of the *Code Civile*, when the property of the walls is not contested. Demands for aliment not exceeding 150 francs

Actions of aliment.

(d) Code de Procedure Civile.

per annum made in virtue of articles 205, 206, and 207 of the *Code Civile*.

7. They judge likewise in all demands by way of counter claims or compensation which by their nature or value are within the limits of their competency, even though these demands, added to the principal claim in dispute, would, under article 1, exceed 200 francs. They are competent, besides, to counter claims in questions of damages (*dommages-intérêts*) to any amount founded exclusively upon the principal demand itself.

Counter claims or compensation.

8. When each of the demands, principal, counter claim, or compensation, is within the competency of the justice without appeal, his judgment upon the whole is not appealable. If one of them cannot be judged without an appeal, he must pronounce upon them all subject to appeal. If the counter claim or compensation exceeds the limits of his competency, he can decline to judge in the principal demand, or send the parties at once to the Tribunal of First Instance, without the preliminary of conciliation (*e*).

Right of appeal where there are counter claims.

9. When several demands made by the same party exceed 100 francs, the justice will only be entitled to judge of them subject to appeal, even though each of them is below that sum; and he will be incompetent to judge if the total sum exceeds the limits of his jurisdiction (*f*).

Right of appeal in cases where several demands made by same party.

10. In the case where seizure of the goods or chattels of a party (*saisie gagerie*) is made in virtue of permission of the justice, it must be given by the justice of the place where the seizure is to be made. If there is opposition by a third party for a cause or an amount not within his competency, he must refer the decision to the Tribunal of First Instance.

Attachment or arrestment of moveables in hands of third parties.

By the law of 14th May, 1791, justices had jurisdiction in disputes with regard to patents (*Brevets d'invention*), but this was taken away from them by article 20 of the law of 25th May, 1838.

No longer competent to judge in questions of patents.

The jurisdiction of the justice of the peace is, like that of other judges, circumscribed by his territory, when not prorogated.

What is called—

Gracious Jurisdiction comprehends the power of convoking family councils (*g*); of putting on and taking off of seals; of taking

Gracious or ministerial jurisdiction.

(*e*) *Code de Procedure Civile*.

(*f*) Barots, *Dictionnaire de Droit Français*.

(*g*) Family councils (*Conseils de famille*) are held with reference to the appointment of tutors and curators,

inventories of the moveables and titles of absent persons; of verifying certain public registers; of drawing up and signing notarial acts, and others of a like nature; and includes the reception of acts of adoption and emancipation, and the doing of acts proper to expedite the execution of his own judgments.

Conciliation. *Conciliation.*—This is termed *preliminary* procedure before a justice of peace, with the view of preventing a legal process. It was introduced by the law of 24th August, 1790, was modified by the laws of 27th March, 1791, and 14th Ventose in the fourth year of the Republic, and has been reserved by the *Code de Procedure Civile* for cases in which the reasonable hope of an arrangement would compensate for any additional expense or delay occasioned by it. The attempt at conciliation is only a preparatory procedure, and forms no step in any purely legal process which may follow.

Conciliation merely a preliminary step.

Must be tried in certain cases before application to ordinary legal tribunals.

No principal demand leading to an action between parties capable of transacting, and with regard to matters which can be the subject of a transaction, will be received in the Tribunals of First Instance unless the defendant has been first of all called into conciliation before a justice of peace, or the parties have voluntarily appeared before him (*h*).

The following matters are excepted from this preliminary ordeal, by reason of the incapacity of the parties not permitting them to transact, or by the nature of the matter itself, which may require prompt judgment, or because it appertains to the public minister in the interests of order and of the laws:—1. Demands which concern the state and its domains, or public establishments, or which relate to minors, interdicted persons, and curators to vacant successions. 2. Demands which require despatch. 3. Demands founded upon guarantee, or in intervention for others. 4. Demands in matters of commerce. 5. Demands in matters of liberation from prison, and in replevin in connection with payment of rent of houses, or farms, or arrears thereof; demands of solicitors in payment of costs; demands against more than two parties when the matter is an *unum quid* (*i*). 7. Demands in verification of writings, and questions as to the

Exceptions.

marriage, interdiction, absence in foreign countries, &c., and are regulated by section 407, and other sections, of the *Code Napoleon*.

(*h*) Code de Procedure Civile, art. 48.

(*i*) "Anything which is to be regarded as one." Where two or more things apparently different are held to constitute one matter, they are said to be an *unum quid*.

competency of the judge, or as to making him a party. 8. Demands against a person in whose hands funds are attached or arrested, and concerning attachments generally; with regard to the restoration of titles, the separation of goods; demands in regard to tutories and curatories, and others excepted by law (j).

Procedure in Conciliation.—The defendant is to be cited in conciliation—1. In matters personal and real, before the justice of peace of his domicile: if there be two defendants, before the justice of the domicile of either of them. 2. In a matter of partnership, other than that of a commercial nature, before the justice of peace where the society exists. 3. In matters of succession, upon demands by or among the heirs until the division; by creditors of the defendant before the division; and upon demands relative to the execution of dispositions, *mortis causa*, until final judgment—the parties are to be cited before the justice of the peace where the succession has opened (k). Procedure in conciliation.

The party is cited to appear within three days by the officer of the justice of peace. The citation should state succinctly the object of the conciliation (l), in order that the person cited may know what he will have to explain. The parties ought to appear in person; but in case they cannot, the party appearing for an absentee must produce authority (m). Before what justice de fendant to be cited.

A husband is the presumed mandatory of his wife, and he can therefore validly represent her before the *bureau de paix* without requiring to produce her procuration. He cannot, however, maintain an action concerning her *immeubles personnels* (real estate) without her consent; he can only do so with regard to *actions mobilières et possessoires* (actions as to moveables and possessory actions) (n). Indicates and appearance.

At the compareance before the *bureau de paix*, the demandant or plaintiff will explain his demand, which he may, if he choose, increase, and the defendant will state his objections or counter claims. The *procès verbal* to be drawn up by the justice will state the arrangement come to, if any; if none be arrived at, he will state shortly that fact. The heads of arrangement inserted in the *procès verbal* will have the force of private obligations (o). Husband's rights as mandatory of wife.

(j) Code de Procedure Civile, art. 49.

(k) Ibid., art. 51.

(l) Ibid., art. 52.

(m) Ibid., art. 53.

(n) Ibid., art. 1428.

(o) Ibid., art. 54.

Procedure on compareance.

Results.

When the citation given only leads to conciliation, the justice can give no judgment upon the matter in litigation (*p*).

If one of the parties refers to the oath of the other, the justice will receive it, or note that the party refuses to give it (*q*).

The party who does not appear will be condemned in a fine of ten francs. If, however, he can satisfy the Tribunal of First Instance that it was impossible for him to have compeared, he will be heard in his defence, without payment of the fine.

Effect of citation in interrupting prescription.

The citation in conciliation interrupts prescription, and is a *terminus a quo* with regard to the running of interest (*r*). In case of non-compearance of one of the parties, an entry to this effect will be made in the register kept at the bureau, and upon the original or the copy of the citation, without the necessity of drawing up a *procès verbal* (*s*).

Registration of minute.

Registration.—When the parties cited do not appear, an entry of non-compearance upon the register, and upon the original or copy of citation, entails no legal consequences (*t*).

Effect of procès verbal.

If they have compeared but are not conciliated, the *procès verbal* is subject to a registration fee of one franc (*u*). The *procès verbal* of conciliation, which in terms of law is equal to a private obligation subject to registration by minute, is liable to the same fees which the matter it contains would be subject to if it were contained in private acts or in those of a notary (*v*).

(*p*) C. Cass. 21 Mess. an. V., s. 20, 1-474. (*q*) C. Proc., art. 55.

(*r*) Code de Proc. Civ., art. 57.

(*s*) Ibid., art. 58.

(*u*) L. du 22 Frim. an. VII., art. 68, s. 1, No. 47. Déc. du min. des fin. du 10 Sept., 1823.

(*t*) Déc. du min. des fin. du 7 Juin, 1808.

(*v*) Ibid.

PART II.

JUSTICES OF THE PEACE IN ENGLAND AND SCOTLAND.

CHAPTER I.

THE NATURE, CONSTITUTION, AND FUNCTIONS OF THE COURTS OF JUSTICES OF THE PEACE IN ENGLAND AND SCOTLAND, AND THEIR JURISDICTION AND POWERS IN QUESTIONS BETWEEN EMPLOYERS AND EMPLOYED.

It has long been felt by the community generally, that the relations between employers and employed in Great Britain were not merely unsatisfactory in themselves, but that the legal machinery provided for adjudicating upon them had ceased to work effectively, even if it had ever been a suitable means for such an end.

Although in England, as early as 1698, statutory encouragement had been given to arbitration by the Act 9 & 10 William III. c. 15, it seems never to have occurred to our legislators to give powers for the formation of courts similar to those of the *Prud'hommes* in France, which had before that period been in operation in that country; nor indeed in Scotland, which, from her constant intercourse and close alliances with France, had formed her legal institutions upon French models, do we find anything resembling the principle of such a court. In fact, until a very recent period, its very existence seems to have been unknown in this country.

Encouragement given to arbitration in England in 1698.

The power of deciding questions between masters and servants was conferred, both in England and Scotland, by statute upon justices of the peace (a), whose primitive duties were simply those of the *Irenarcha* of the Romans, viz., preserving the public peace within the territory to which they were named (b). In remote times and in localities distant from any central and superior

Powers given to justices of the peace in questions between masters and servants.

(a) "Men," according to Lord Cowper, "sometimes illiterate and frequently bigoted and prejudiced," 2 Reeves, 468.

(b) *l. C. unic. C. De iren.*

tribunal, a rough and ready administration of the law by untrained men may have answered the wants of those days; but it was natural to expect that when employers of labour came to occupy the position of judges, and the employed continued to be the parties to be judged, a court so constituted would in time fall under the suspicion of sympathizing with the order from which its members were recruited.

By the law of England servants have been divided into the following classes:—

Various
classes of
servants
in
England.

1. Menial servants, so called from being *intra mœnia*; in other words, domestic servants, who are held to be hired by the year when no term is fixed upon. Local usage, however, frequently determines this.

2. Apprentices, who, however, in certain respects to be afterwards noticed, are not held to be servants. They are usually bound for a term of years by indenture to serve their masters, who are bound to instruct them. In former times they also lived with, and were maintained by, their employers, and this practice still exists.

3. A third kind of servants are labourers, who are usually hired by the day or week.

4. A fourth species, although not perhaps, properly speaking, falling within the category of servants, are stewards, factors, and bailiffs (c). Formerly "all single men between twelve years old and sixty, and married ones under sixty years of age, and all single women between twelve and forty, not having any visible means of livelihood, were compellable by two justices to go out to service in husbandry or certain specific trades, for the promotion of honest industry" (d).

Division of
servants by
the law of
Scotland.

In the law of Scotland, as it existed in the time of Mr. Erskine (e), servants were divided into necessary or voluntary. "Those may be called necessary" (f), he says, "whom the law obliges to work.

(c) Blackstone's Commentaries, vol. i. pp. 425-26, et seq.

(d) Black., vol. i. p. 426.

(e) Ersk. Institutes, b. i. t. 7, s. 61, 62.

(f) Compulsory would have been a more appropriate term. In strict logical accuracy all servants may be said to be necessary, either, first, to other people, or, second, relatively to the state, to save the public purse. They

may be said to be compulsory, either, first, where they voluntarily go into service, impelled by that natural necessity which obliges every one not endowed with a fortune to earn a living; or, second, when they are compelled to do so by the action of some coercive law.

Mr. Erskine and Sir Wm. Blackstone were contemporaries. The former was born in 1695, and the latter in 1723. Mr. Erskine resigned his professorship

Of this sort are, first, indigent children, who, if they be declared indigent by the magistrates of the burgh or kirk-session where they are seized, may be compelled by 1617, c. 10 (*g*), to serve any of the king's subjects without wages till the age of thirty, and whatever is gained by their work during that period is gained to their masters; second, vagrants and sturdy beggars may, by 1663, c. 16 (*h*), be compelled into service by any manufacturer within the kingdom at the order of the magistrates of the place where they are laid hold on; and because few persons were willing to take vagrants into their service, public workhouses are, by 1672, c. 18 (*i*), ordered to be built at the several boroughs mentioned in the Act for *entertaining* and setting to work vagrants and idle persons, and the profits of their labour are by that Act appropriated for the support of the houses; third, if labourers, workmen, or servants shall refuse to serve at the rates fixed by the justices of the peace, the justices may compel them to it by imprisonment, or further punishment at their discretion, 1661, c. 38 (*j*).^{Powers of magistrates to compel vagrants to work.} He states again—"Voluntary servants are those who enter into service without compulsion, by an agreement or covenant for a determinate time, either simply for bed, board, and

In Scotland justices of the peace might compel workmen to labour at certain rates.

of law in Edinburgh in 1765; while Sir William, then Mr. Blackstone, gave up his Vinerian appointment at Oxford in the following year. Mr. Erskine died in 1768, at the age of seventy-three; while Sir William Blackstone died comparatively young, being only fifty-seven at his death in 1780. Blackstone's first legal work, "An Essay on Collateral Consanguinity," was published in 1750; while that of Erskine, his "Principles of the Law of Scotland," appeared in 1754. This work long held its place as a text-book of that law of which it was an admirably clear and precise exponent. The first volume of Blackstone's Commentaries was published in 1765, while Erskine's Institutes did not appear until 1773, five years after his death, and of course it laboured under all the disadvantages of a posthumous publication.

It would be out of place here to run any further parallel between these two eminent men. We may, however, go the length of saying that it would be

hard to find a more industrious or erudite lawyer than Erskine, of whom it has been truly said that he has "thrown open the portals of the municipal law of Scotland equally to the judge, the lawyer, the student, and the educated citizen"(*k*). Blackstone, however, without perhaps greater legal acquirements, possessed the advantage of more extensive scholarship and a more intimate acquaintance with literature, which enabled him to clothe his Commentaries with a grace of style that was not aimed at by the other, although he would be a very fastidious critic who could object to the diction of Erskine.

(*g*) 1617, c. 10.

(*h*) 1663, c. 16.

(*i*) 1672, c. 18.

(*j*) 1661, c. 38. This provision has been abolished by 53 Geo. III. c. 40. The law of both countries is now, of course, altered, and is to be found embodied in their respective Poor Law systems.

(*k*) Preface to Macallan's edition of the Institutes. Edinburgh, 1838.

clothing, or also for wages. Under voluntary servants may be included apprentices (from the French *apprenti*), who engage to serve under a merchant, artificer, or manufacturer for a determinate number of years, on condition that the master shall in that time instruct them in the knowledge of his particular art or profession" (l).

In Scotland, in the absence of special stipulation, domestic servants are held to be hired by the half year, but agricultural servants by the year, unless other rules prevail by local custom.

Similar
powers given
to justices in
England.

While in both countries justices of the peace were empowered to fix the price of labour, none of the statutes in England giving them jurisdiction in the case of wages extended to domestic servants, whose claims are left to be dealt with by the ordinary tribunals. Blackstone says (m), "A third species of servants are *labourers*, who are only hired by the day or the week, and do not live *intra mœnia*, as part of the family, concerning whom the statutes before cited (n) have made many very good regulations—1. Directing that all persons who have no visible effects may be compelled to work; 2. Defining how long they must continue at work in summer and winter; 3. Punishing such as leave or desert their work; 4. Empowering the justices at Sessions, or the sheriff of the county, to settle their wages; and 5. Inflicting penalties on such as either give or exact more wages than are so settled." In a note by Mr. Lee, the editor of the first volume of the eighteenth edition of the Commentaries (1829), he states—"The statutes had in this respect long become virtually repealed. The condition of the labourer had been sufficiently deteriorated, by means which it is not necessary to mention in this place, to discourage the frequent interposition of a magistrate in respect of wages. That the labourer might bargain for what he could get, and that the market would always be supplied in proportion to the demand; that the question was best left to individual contract rather than maximums or minimums to be fixed by authority—were maxims beginning to gain ground. The enabling magistrates to interfere between man and man in these matters was seen to be as foolish as it was tyrannical. The acts of regulation enacting penalties, &c., disgraced the statute-book,

(l) Ersk. Inst., b. i. t. 7, s. 62.

(n) Stat. 5 Eliz. c. 4; 6 Geo. III.

(m) Black. Comm., vol. i. cap. 14, p. 427. c. 26.

and by statute 53 Geo. III. c. 40 (o) were expunged. Such acts could not lately be enforced without great injustice."

"The legislature has much vacillated in regard to labourers. At one time it should seem that between them and their employers there could be no general rule applicable to treating them save mere selfish power; at another time the legislature appeared to reflect that if authority were exerted at all on their behalf, it should be conservative, benign, and conciliating. Yet the most fearless and avowed advocate the poor ever had in this country amongst the nobility was Edward Seymour, duke of Somerset, *temp.* Edward II. The landed aristocracy beheaded the duke, impudently making it his most heinous offence that he had imputed the rising of the people to the avarice of the gentry, which had occasioned the then dearth" (p).

Blackstone states again (q)—"By service all servants and labourers, except apprentices, become entitled to wages according to *their agreement*, if menial servants; or according to the apportionment of the sheriff or Sessions, if labourers or servants in husbandry, for the statutes for the regulation of wages extend to such servants only, it being impossible for any magistrate to be a judge of menial servants, or, of course, to assess their wages." This distinction has been preserved in the law of England until the present day, although many people are unable to perceive the impossibility which seems to be the foundation of it. The reason of the distinction, however, seems to be that the hours of farm labour are practically defined by the custom of the district, while the services of menials are regulated almost entirely by the will of the master. The remuneration, therefore, it is said, is in the one case capable of some adjustment by a third party, while in the other no fixed rule can be laid down so as to become positive law.

Mr. Erskine, in his Institutes, also refers to this subject. He says, speaking of justices of the peace (r)—"They may compel servants and day-labourers to serve for a reasonable hire, under the pain of imprisonment, and condemn their masters or employers to pay their wages.

With regard to the power which masters could exercise over

(o) 53 Geo. III. c. 40.

(p) Black. Comm., vol. i. p. 427, note 13.

(q) Ib., p. 428.

(r) Ersk. Inst., b. i. t. 4, s. 13.

Ed. VI ?

Menial servants by law of England excepted from jurisdiction of justices.

Powers of
masters by
law of Eng-
land over
servants.

their servants, Blackstone states—"A master may by law correct his apprentice for negligence or other misbehaviour, so it be done with moderation, though if the master or master's wife beats any other servant of full age, it is a good cause of departure (s). Formerly, if any servant, workman, or labourer assaulted his master or dame, he was liable to a year's imprisonment and other corporal punishment not extending to life or limb" (t). The statute under which this penalty was incurred was, however, repealed by 9 Geo. IV. c. 31 (u). By the Act 14 Vict. c. 11 (v), it is a misdemeanor punishable by imprisonment not exceeding three years, with or without hard labour, if a master neglect to provide (when legally liable to do so) his servants or apprentices with necessary food and clothing, or if he assault them so as to endanger life or permanently injure their health.

Correspond-
ing powers
by the law
of Scotland.

Mr. Erskine lays down the broader doctrine that "All masters have a power of moderate chastisement over their servants, whether voluntary or necessary; and the masters of public work-houses are, by 1672, c. 18 (w), allowed to go all lengths in correction, life and torture excepted" (x). Cases involving assault or personal injury are, in Scotland, left to be dealt with by the ordinary criminal tribunals.

Unnecessary
interposition
of justices in
questions be-
tween em-
ployers and
employed.

The vacillation referred to by Mr. Lee, writing in 1829, on the part of our legislators in their dealings with industrial legislation, has pervaded all attempts at law-making since then. Instead of the interposition of the magistrate in questions between employers and employed having been, as it ought to be, discouraged, the action of the justices has more or less been kept up in every Act of Parliament passed on the subject. It is only within the last year that, after one or two abortive attempts had been made to change the previous system, the experiment has been inaugurated of giving masters and workmen legal powers to form courts for the consideration and decision of their own disputes and differences; but even here the justice of the peace element crops up, by the machinery of that court being made the vehicle by means of which alone the judgments pronounced can receive legal effect.

(s) Black. Comm., vol. i. p. 429. The term "correct" has been held to mean corporal punishment by whipping, 5 Burns' Justice, p. 540; but whipping of females is abolished by 1 Geo. IV. c. 57.

(t) Stat. 5 Eliz., c. 4.

(u) 9 Geo. IV. c. 31.

(v) 14 Vict. c. 11.

(w) Scottish Act, 1672, c. 18.

(x) Ersk. Inst., b. i. t. 7, s. 62.

It would be productive of no good to conceal the fact that there exists a strong feeling in the country that Justice of Peace Courts, both civil and criminal, are not in harmony with the progress of the age. The prevalent idea is, that the proper functions of the justice himself are those which he possessed previous to the passing of the Act of the 34th of Edward III. (y), when he was simply a conservator, warden, or keeper of the peace. This Act gave justices the right for the first time to try felonies. A French writer sees in the powers conferred upon them by that statute what he seems to think has been overlooked by English writers—a deep design on the part of Edward against the rights of a certain class of his subjects, viz., “*La suppression des législations personnelles, opérée sans que l’histoire en fasse mention, sans qu’aucun des auteurs qui ont écrit sur les lois anglaises s’en soit aperçu*” (z).

Justice of Peace Courts not in harmony with the progress of the age.

Origin of their judicial power in England.

The breaking up of these personal jurisdictions, however, is not what Blackstone seems to deprecate. In referring to the statute 1 Edward III. stat. 2, c. 16, he says—“It was ordained in Parliament that for the better maintaining and keeping of the peace in every county, good men and lawful, which were no maintainers to evil, should be assigned to keep the peace.” He adds, however, in a tone of evident regret, “And in *this* manner and upon *this* occasion was the election of the conservators of the peace taken from the *people* and given to the *Crown*” (a). Yet the 34th of Edward III. c. 1, made fair provision for the exercise of the new powers conferred upon the conservators, by enacting that “One lord and three or four most worthy men in the county, with *some learned in the law*, shall be made justices in every county.” The statute 13 Richard II. st. 1, c. 7 (b), orders them to be of “the most sufficient knights, esquires, and *gentlemen of the law*.” To secure further the appointment of men whose means would give some guarantee for education and position, the statutes 5 Geo. II. c. 18, and 18 Geo. II. c. 20 (c), enact “That every justice acting for a county,

Originally named by the people.

Provisions as to their qualifications.

(y) 34 Edward III. c. 1.

(z) “The suppression of personal jurisdictions, effected without any mention being made of it in history, and without being observed by English writers.”—Meyer, *Esprit, Origine et Progrès des Institutions Judiciaires*,

vol. ii. p. 115. Londres, 1819. See also Vincke, *Darstellung der innern verfassung Gross Britanniens*. Berlin, 1818,

(a) Blackstone, *Comm.*, vol. i. c. 9, p. 351. 1 Ed. III. stat. 2, c. 16.

(b) 13 Richard II. stat. 1, c. 7.

(c) 5 Geo. II. c. 18; 18 Geo. II. c. 20.

except such privileged persons as are therein excepted, shall have £100 per annum clear of all deductions, or a reversion or remainder with reserved rents amounting to £300 per annum."

Ancient appointment of *quorum*.

Formerly, besides, there was a *quorum* appointed on the commission, consisting of a select number of justices eminent for their skill and discretion; but this commendable custom has fallen into desuetude, and as if to deprive the court of any pretensions to legal knowledge or skill, the Act 5 Geo. II. c. 18, substantially re-enacted by 6 and 7 Vict. c. 73 (*d*), provides "That no practising attorney, solicitor, or proctor shall be capable of acting as a justice of peace." A similar unmeaning and senseless exclusion was introduced by the late Mr. Joseph Hume into an Act applicable to Scotland, viz., the Small Debt Act, 6 Geo. IV. c. 48, s. 27 (*e*).

Exclusion of attorneys and solicitors.

Introduction of justices of the peace in Scotland.

The office of justice of the peace was attempted to be introduced into Scotland by the Act 1587, c. 82 (*f*); but it required repeated legislative enactments before it was permanently established. Mr. Erskine, in his "Principles of the Law of Scotland," says—"Justices of the peace are magistrates named by the sovereign over the several counties of the kingdom for the *special* purpose of *preserving the public peace*. Their power by 1609, c. 7 (*g*), reaches little further than to bind over disorderly persons for their compearance before the Privy Council or Justiciary; but by 1617, c. 8, and 1661, c. 38 (*h*), they are specially directed to judge in breaches of the peace, and in most of the laws concerning public policy" (*i*). By the Articles of Union justices of the peace in Scotland are invested with similar powers to those possessed by their brethren in England in matters touching the customs and excise; and by the statute 6 Anne, c. 6, s. 2 (*j*), the same powers are given to justices in Scotland which had formerly been enjoyed by justices of the peace in England in relation to and for the preservation of the peace, leaving the trials and judgments to be regulated by Scottish forms and customs. In Scotland, however, no particular qualification in rank or property is requisite to enable a person to act

Same powers conferred upon them as upon justices in England.

(*d*) 6 & 7 Vict. c. 73.

(*e*) 6 Geo. IV. c. 48, s. 27. By the Act 19 & 20 Vict. c. 48, s. 4, any attorney or solicitor who has been elected as a magistrate of any burgh of which the magistrates are *ex officio*

justices of the peace, may act as such during the time he holds office.

(*f*) 1587, c. 82.

(*g*) 1609, c. 7.

(*h*) 1617, c. 8; 1661, c. 38.

(*i*) Ersk. Prin., b. i. t. 4, s. 9.

(*j*) 6 Anne, c. 6, s. 2.

as a justice of the peace, nor is there any such official now in that part of the kingdom as the *custos rotulorum* of England.

It is not necessary for the purposes of this work that we should enter into a detail of the special powers of the court. Suffice it to say that it has come down to our day considerably increased in statutory jurisdiction, but certainly not with a bench correspondingly improved in point of judicial knowledge or general learning; at all events, those of its members who are sufficiently *juris periti*, and otherwise qualified, do not, as a rule, grace the court with their presence. In Scotland it has lost almost all the common law powers it at one time exercised, and can now only be recognized as a legal luminary upon the assumption of *lucus a non lucendo*. In many parts of the country the commission is recruited by lists sent up by the local agent of the sitting member, whose especial care is to fill in the names of his own and his constituents' supporters, irrespective altogether of their qualifications for the office or of their position in society; all with deep pockets and strong party sympathies being alike eligible for recommendation to swell the ranks of the Commission of the Peace. The working of the courts, in Scotland at least, is undoubtedly in the hands of employers of labour (*k*). On rare occasions, perhaps, some of the county gentlemen may attend, such as at Quarter Sessions, or when, as some people wickedly insinuate, they are canvassed for a special purpose,

Present condition of the body in Scotland.

How courts are presently worked.

(*k*) Sheriff Barclay, in his evidence before the Select Committee of the House of Commons in June, 1865, said:—"I may explain that in our county our justices (a great number of them, perhaps the best) are non-resident, others are at a great distance from the seat of court, and a great number of them are unwilling to act. I am sorry to say that the justices in Scotland do not like to take the responsibility frequently, and they devolve a good deal of the proper justice of peace business upon the sheriff." (Minutes, p. 13.) While the county of Perth has lost nothing by this circumstance, the public generally are no doubt indebted to it for Dr. Barclay's admirable "Digest of the Law of Scotland," to which we must here acknowledge our obligations. This unwillingness to perform duties for which the majority

of justices at least have the excuse of being entirely unfit is also noticed by Blackstone, who says—"And as to the powers given to one, two, or more justices by the several statutes which from time to time have heaped upon them such an infinite variety of business, that few care to undertake, and *fewer understand* the office, they are such and of so great importance to the public that the country is greatly obliged to any worthy magistrate that, without sinister views of his own, will engage in this troublesome service."—Black. vol. i. p. 353. In no other country probably in Europe does such a state of the magistracy exist. Even the *alcalde* of a Spanish village makes some pretensions to know the law he administers. The remedy is obvious, and must come sooner or later—stipendiary magistrates.

such as the trial of a poacher, or for securing a license to some favoured individual, or insuring its refusal to one who is not. Hence it happens, as is commonly asserted, that when the unhappy representative of "Bold Robin Hood" is put upon his trial, his fate is left to be determined by individuals who, in the forcible language of those who nowadays frequent the "merry greenwood," are "death upon poachers." These gentlemen, by reciprocal comity, are said to leave to the plebeian instincts of *la classe roturière* the disposal of questions with their servants, workmen, and debtors. It need be matter of no surprise, therefore, in this state of feeling upon the subject, that it should be said that the Justice of Peace Court for the recovery of debts, to which in Scotland they are competent by statute to the extent of £5, is pre-eminently a court favoured by plaintiffs—

Hardships
upon defen-
dants.

1st, Because they are supposed to have its sympathy;
-2nd, Because the defendant cannot have a solicitor to plead for him, practitioners of the law being excluded;

3rd, Because the defendant cannot open his mouth to state a defence without first tendering sixpence to the clerk;

4th, Because he cannot offer himself as a witness without payment of a shilling;

5th, Because he must pay fourpence for the oath of each witness he brings forward; and

6th, and worst of all, Because, should judgment pass against him in absence, he cannot have his case reheard, however unjust the decree may be, unless he first consign in the hands of the clerk the *full* amount of the sum for which judgment has been given, and pay, besides, the sum of one shilling and sixpence as consignment fees. In many cases this provision operates as a virtual denial of justice, for many a poor man is utterly unable to raise the sum necessary, even although it does not exceed £5, to enable him to have his case heard. It is well known that the working classes in Scotland are peculiarly liable to be imposed upon by means of what are called "lock-hole executions"—that is, a return by the constable to the court certifying that the writ has been served by leaving a copy of it in the key-hole of the door of the defendant's house, which is a legal mode of serving a writ when access cannot be had to the house itself, or the defendant has not been served personally. The first thing many of the poor people who are dragged into the

Lock-hole
executions
in Scotland.

courts know about the issuing of a summons against them, is the stoppage of their wages by attachment, called in Scotland arrestment. Nothing is easier than to put the writ of summons into the key-hole of the defendant's door when it is known that he may be at his employment elsewhere, except, indeed, it be the taking of it back again; and that this is pretty often a sequel to the ceremony, when it is performed at all, is unfortunately too well known to be doubted. Instances, therefore, occur every day in which people, harassed by attachment of their wages, submit to pay debts by small instalments, for which judgments have passed against them without their ever having been actually served with a writ, but from which they cannot get clear for want of the necessary funds to make consignment.

Consequences thereof.

Consignment acts as a virtual denial of justice.

Were it not that constant familiarity with things as they are blunts the edge of our perception to the impression of the manifest unfitness of many of them to particular ends, it would strike us at once as being supremely ridiculous that men, selected, as a general rule, for no special qualifications whatever except, perhaps, the circumstance of their having manifested political leanings or predilections with more zeal and pecuniary resources than other individuals, should be placed in the position of judges over their fellows, and should be let loose, so to speak, upon society to decide such wide and multifarious questions as fall within the scope of what is called justice of peace law. One can understand a bench of engineers hearing and disposing satisfactorily of disputes in their own particular business and its cognate branches; but without attaching any significance to the statement of Blackstone, that there was in his time such difficulty in a magistrate being a judge of the employment of *menial* servants as amounted to an actual "*impossibility*," it may well be asked, how it comes that a modern bench of justices, not one of whom may know anything of engineering, are supposed to be capable of disposing of the most intricate questions both of law and fact in that and other equally difficult matters with perfect facility? The absurdity of the system, in fact, can only be fully realized by supposing the anticlimax of the jury suddenly reducing the chief justice at Westminster, or the lord president in the Parliament House, Edinburgh, to the position of mere clerks of the peace, to be received as guides, philosophers, and friends just as whim or caprice might direct. What would become of us should

Justices appointed without reference to any special qualifications.

Impossible that they can fulfil many conditions of efficient judges.

Absurdity of the system manifest.

Requisites of
an efficient
judge.

such an untoward event take place? And what happens to the individuals in humble life to whom it is virtually *un fait accompli*? In referring to the qualifications and duties of judges, Domat observes—"The capacity of the officers of justice, who are *bound to know the laws*, consists in a stock of good sense, together with a degree of understanding, and a genius capable of that science which consists in a clear, solid, and methodical knowledge of the principles and of the rules relating to the several matters of the law, that they may comprehend the connection between the rules and their principles, and that they may know how to apply them to the questions that are to be decided; but without this science the best sense will not be sufficient for understanding and deciding the doubts which arise, or supplying the want of the knowledge of many rules which, being wholly arbitrary, must be learnt and precisely followed, so that *mere good sense* can never teach us what is regulated by arbitrary laws" (1).

Justices assisted
sometimes by able
clerks.

Clerks, like
justices,
appointed
merely from
political in-
fluence.

Tried by this test, which, however, assumes the presence of "good sense"—a quality, unfortunately, which does not happen to be possessed by everybody—how utterly false is the position in which men are placed, some of whom having spent their lives it may be in weighing out snuff and tobacco, or in summing up the columns of bulky ledgers, are supposed, after they have acquired a competence and leisure, to be perfectly well fitted for weighing the *pros* and *cons* of legal argument, and summing up the probabilities of conflicting evidence. It may be said, and said truly, that the bench is sometimes presided over by an intelligent chairman, and that they have often able clerks to advise them on points of law; but while that is so, it is often the other way. Justice of peace clerks are no more selected for their office on account of superior ability than are the justices themselves, but owe their appointments to the same special influence which secures to the bench, in too many instances, the weight of conspicuous incompetence. Where, however, the clerk happens to be an able man, and the justices are sensible enough to be guided by his advice, which does not by any means happen so often as it should, then it is the clerk who judges, and not the justices; but when he does not chance to be a "bright particular star," the case becomes one of the blind leading the blind, and the wonder is that they do not fall oftener

(1) Domat, *Loi Publique*, b. ii. tit. 4, s. 3.

than they do into the ditch, and come to grief in the superior courts, notwithstanding the care with which each successive Act of Parliament, while increasing their powers, endeavours to lessen their responsibilities by providing against their anticipated shortcomings (*m*).

The increasing powers conferred upon County Courts in Eng-
land and Sheriff Courts in Scotland, which are the direct result
of a strong public feeling in favour of stipendiary magistrates,
will insensibly affect both their civil and criminal jurisdiction;
while the recent privileges given to masters and workmen to
form councils of conciliation and arbitration will withdraw from
their tribunal a class of cases for the determination of which such
councils seem to be peculiarly adapted. That the criminal not
less than the civil jurisdiction exercised by justices should be
transferred to thoroughly trained and independent judges is the
feeling of the day, even though the change would deprive the
country squire, after the gout had destroyed his aptitude for
foxhunting, from sitting in judgment upon his natural enemy the
poacher—and should also prevent Bailie Makumsmart from
repeating the address maliciously ascribed to him when sentencing
“an ill-faured loon frae the Briggate” to thirty days, “because
the offence hadna been fully pruvén,” but adding, with a look of
ineffable wisdom and severity combined, “had it been sae, I wad
hae gi’en ye saxty!”

Decrease of
jurisdiction
of justices in
consequence
of growing
powers and
efficiency of
County and
Sheriff
Courts.

Public feel-
ing that
power of
justices
should be
transferred
to stipen-
diary magis-
trates.

The circumstances attending a case which recently occurred in the neighbourhood of Glasgow under the Poaching Acts, have, besides, gone far to cast a stronger stigma upon these courts than even that of being often nothing better than a packed bench of partizans. From that case it appears that a justice, along with a justice of peace fiscal (*n*) and a justice of peace clerk, actually formed a conspiracy to cause a notorious poacher to commit a trespass. They employed an individual, whose business was to form the acquaintance of the intended victim, and get him to fix

Extraordin-
ary case
which occur-
red in neigh-
bourhood of
Glasgow.

(*m*) Some idea may be formed of the state of these courts from the fact that Mr. Sheriff Barclay, in the work to which we have already referred, found it necessary to insert the following note:—“It cannot be sufficiently impressed on justices of the peace to abstain from all private interviews with parties to causes in their court. No-

thing has brought more disparagement on this important jurisdiction. A stern refusal to hear anything of a cause except in court will add much to the weight and authority of the judge, and relieve him from much disagreeable importunity.”—Barclay’s Digest for Justices of the Peace, p. 579.

(*n*) Public prosecutor of the court.

Extraordin-
ary case
which occur-
red in neigh-
bourhood of
Glasgow.

a time and place for entering upon certain grounds, where a body of keepers, armed to the teeth, and aided by one of the county constabulary, were to be waiting to apprehend the trespassers in *flagrante delicto*. The decoy-duck, it appears, was actually furnished by the fiscal with a double-barrelled gun, in order that he might the more completely assume the rôle of being an English poacher who had been obliged to fly from justice to Scotland. The tempter succeeded in prevailing upon the unsuspecting poacher to enter upon a nocturnal expedition, which fact having been duly communicated to the justice of peace clerk of the locality, that keen and lithe official immediately called at the office of the county constabulary, and got one of the policemen to join the keepers. The poachers consisted of two, besides their intended betrayer. After having been permitted to snare a few hares, they were, at a given signal, completely surrounded by the keepers; but in the confusion the individual for whose especial capture this infamous plot was devised managed to slip through the hostile cordon, snatching in his flight the fiscal's gun out of the trembling hands of its recreant possessor. He was not, however, allowed to escape without a close pursuit. A stalwart gillie, whose speed was accelerated by the impetuous *élan* of a huge dog, half mastiff, half bull, which he held in leash, was within a few paces of the flying poacher, who heard the deep panting of the eager brute with uneasiness, but without dismay. Making a sudden wheel he levelled his piece, and shot the bull-dog stone dead in a trice.

"Procumbit humi bos."

The astonishment of the keeper at this daring act was soon converted into a feeling of a different kind on observing that his own body was steadily covered by his opponent's gun, and on hearing the short and sharp intimation, that if he moved another step he would have the contents of the second barrel through his head. The poacher, as will be anticipated, effected his escape. His two companions, however, were secured and lodged in prison, the policeman, who was not aware of the plot, refusing to allow the Iscariot of the party to get away. He was, however, liberated through the direct interposition of his employers, while the unfortunate dupe who was caught was tried in the most summary manner by the complotting justice, who

had not been known to attend the courts for several years before! The prisoner received very short shrift at his hands, before being sentenced to six months' imprisonment with hard labour (o). The redoubtable poacher, who had for the nonce escaped, was, however, shortly afterwards apprehended in a distant part of the country, which had been previously appointed as a rendezvous in case of danger, whither he was followed by the liberated emissary of his pursuers, by whom he was literally betrayed into the hands of the police by a hypocritical embrace. Lodged in jail, he fortunately fell into the hands of the sheriff court fiscal, his previous convictions being in this respect, at least, of use, that they saved him from being tried in a Justice of Peace Court. On that functionary reporting the proceedings to crown counsel in Edinburgh, these gentlemen were so satisfied that the prisoner was the victim of a conspiracy that they at once ordered his liberation from prison, although there was not the least doubt that the offence charged against him had been committed. The matter, it is to be hoped, will not rest here. The other individual, however, who was sentenced to six months' imprisonment, is still in jail (p). (*Vide* Note, p. 68; also pp. 283-6.)

Extraordinary case which occurred in neighbourhood of Glasgow.

(o) That such things should be done in the nineteenth century, and in

"The land of the bold and the free,"

is hardly credible; but it is the fact notwithstanding. They may well remind us of that period in the history of Scotland, when every marauding possessor of a sea-girt rock or mountain fastness claimed and exercised the right of "pit and gallows," and when an objectionable clansman was expected, as a point of duty, to mount the latter "to please the laird."

(p) The arch conspirator in this disgraceful affair, which was within an ace of costing more lives than that of the poor dog, finds himself placed, with regard to the liberated poacher, probably in much the same position as Justice Shallow was with Falstaff in the "Merry Wives of Windsor:"—

"Fal. Now, Master Shallow; you'll complain of me to the king?

Shal. Knight, you have beaten my men, killed my deer, and broke open my lodge.

Fal. But not kissed your keeper's daughter?

Shal. Tut, a pin! this shall be answered.

Fal. I will answer it straight: I have done all this: that is now answered.

Shal. The council shall know this.

Fal. 'Twere better for you, if it were known in counsel: you'll be laughed at."

Although the Sir Thomas Lucys of Shakspeare's time are not yet extinct, even in Scotland, it is satisfactory to think that there is a lord advocate to maintain the purity and punish the abuse of criminal administration. Time was, doubtless, when, in the highest courts of that country, a judge could be found with the hardihood to exclaim, "Show me the man, and I'll show you the law;" but it was reserved for a later age to produce one, even in the lowest courts of the realm, who could make himself liable to the charge of saying, "Trap me the man, and I'll tip him the law." Yet it is even so—a melancholy fact enough, and one painfully reminding us that—

"Man, vain man!

Drest in a little brief authority,
Plays such fantastic tricks before high heaven
As make the angels weep."

PART III.

THE STATE OF INDUSTRIAL LEGISLATION, CIVIL AND CRIMINAL, AFFECTING MASTERS, WORKMEN, SERVANTS, AND APPRENTICES, PRIOR TO THE YEAR 1824.

CHAPTER I.

I.—CIVIL LEGISLATION, AS AFFECTING WORKMEN, SERVANTS, AND APPRENTICES, PRIOR TO 1824.

I. CIVIL AS
AFFECTING
WORKMEN,
&c.

Corpora-
tions and
guilds in
England.

Denounced
by Bacon.

Trade mono-
polies in
England
complained
of by Sir
Edward
Coke.

Monopolies
of burgesses
and guild
brothers in
Scotland.

THE relations between masters, workmen, servants, and apprentices in this country were, until within a recent period, much the same as those which existed in France previous to the Revolution. In point of fact, our trade incorporations, guilds, and brotherhoods were formed upon the model of those of France and the Netherlands. Trade monopolies in England had been carried to an enormous length by the corporations during the reign of Queen Elizabeth. Instead of maintaining the weight and authority which Chaucer's expression would seem to imply, of "solempne and grete fraternities," which they probably were in his time, they had become what Bacon denounced, "fraternities of evil"—a state to which they had degenerated by the contracted and selfish policy with which they opposed every attempt to extend the privileges which they exclusively enjoyed. Their monopolies are stated by Blackstone to have been warmly complained of by Sir Edward Coke in the beginning of the reign of James I. (a). These were, however, removed by 21 Jac. I. c. 3 (b), which declares such monopolies to be contrary to law and void, except in certain cases therein mentioned.

In Scotland, the dean of guild, who was the head of the Merchant Company, was by Act of Parliament 1593, c. 180 (c), vested with jurisdiction in all cases between merchant and mariner (d). Trade was restricted by various exclusive privileges.

(a) Black. Comm., vol. iv. p. 159.

(b) 21 Jac. I. c. 3.

(c) 1593, c. 180.

(d) Ersk. Inst., b. i. t. 4, s. 24.

Burgesses and guild brothers had within burgh a monopoly of trade and manufacture, except on market days, when the sale of articles was open to all dealers and manufacturers in the country and unfreemen in town. The inhabitants might, however, at all times buy beyond the burgh, and bring the commodities so bought for consumption within it. The crafts had also their peculiar privileges. They were incorporated either by a crown charter, or seal of cause, or grant from the magistrates as delegates from the crown, or by custom (*e*). They had the exclusive right of making or manufacturing and selling within burgh, but townspeople could manufacture for their own consumption or for exportation. Freedom to work and sell within it, however, could only be acquired by apprenticeship, or by service as a soldier or a sailor. In England one who had served under an indenture for seven years was entitled to prosecute his trade in any part of that country; but it was otherwise in Scotland, where the privilege was restricted to the particular burgh in which the apprentice had learned it. These restrictions and monopolies operated, as can well be imagined, very injuriously upon trade. It will hardly, perhaps, be credited that absolute freedom of manufacture, which had been conferred upon the working classes in France in 1791, was only established in this country in 1847 by the Act 9 & 10 Vict. c. 17 (*f*).

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Privileges of
the crafts in
Scotland.

Rights of
journeymen
in England
and Scot-
land.

(*e*) Bell's Principles of the Law of Scotland, pp. 810-811, ss. 2182, 2183, 2184, 2185.

(*f*) 9 & 10 Vict. c. 17.

Note.—The principle of perfect freedom to labour has not yet, however, been applied in Scotland to the profession of the law. It is one of those anomalies for which people are at times puzzled to account, that some men will go any length in setting every class free from restrictions, except the particular one over which they themselves happen to have control. This apparent anomaly, however, has its true seat in pure selfishness. It is undeniable that lawyers have always taken a forward position in vindicating the claims of liberty and justice. All the more extraordinary is it, therefore, that in this age of advanced free-trade principles the profession, in certain parts of Scotland, should still endeavour to hedge itself in under the name of "Faculties"

with barriers intended to exclude all but the favoured few who are, so to speak, born within the corporation, and, like *enfants du régiment*, are supposed to be the natural inheritors of its privileges and fame.

Apart from the Edinburgh faculties or societies, there are three in the provinces which claim for their members the exclusive privilege of practising in the courts of the respective counties or districts included in their charters. These are—the Faculty of Procurators in Glasgow, the Faculty of Advocates in Aberdeen, and the Faculty of Procurators in Paisley. Into the first no one will be admitted who cannot afford to disburse in the shape of fees some £300 or more; and, besides, even although he had previously been examined, and practised for years, perhaps, in another county, he is required to undergo an examination intended for youths fresh from the lecture-room, the extent of

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By the Scottish Act of Parliament 1661, c. 38, workmen who refused to give their labour at rates fixed by justices of

which has probably been determined by individuals who would never have dreamt of undergoing it themselves, even as young men, still less when they had grown up in actual practice, and had forgotten much of that minute learning naturally expected to be possessed by aspirants fresh from the groves of Academe. The heavy tax, however, levied as "black mail" before a man, no matter how well qualified otherwise, can earn his bread in the courts of that city, is peculiarly obnoxious when it is considered upon what comparatively easy terms the sons and sons-in-law and apprentices of members can be admitted to the inner sanctuary of this exclusive provincial temple of Themis, the doors of which must for ever remain shut to the stranger that is without the gates, unless his *opes et facultates* are considerable, whether his attainments as a scholar and a lawyer are so or not.

It is understood that the rules and regulations of the Faculty of Advocates in Aberdeen are much the same as those of Glasgow.

The Paisley guild, however, is as close a corporation as even the Society of Writers to the Signet in Edinburgh. The Glasgow Faculty will open its gates to any man with a good character, a fair general and legal education, and a long purse; but no one can hope to attain to the privilege of becoming a "Procurator de Paisley," unless he has served an apprenticeship with some one or other of the members of Faculty of that ancient abbatial city, who seem to have adopted with a slight variation the celebrated lines of Lord John Mannors:—

"Let arts and science, wit and learning die,
But leave us still the laws' monopoly."

This is a state of matters, however, which cannot be allowed to last much longer. The Act of Parliament 28 & 29 Vict. c. 85, passed for the purpose of regulating the qualifications of procurators of the Sheriff Courts in Scotland, having provided a mode by which a universal standard of admission has

been established, it should follow that any one who can pass the examination prescribed by the General Council of Procurators ought to be entitled to practise his calling, wherever he may choose to pitch his tent, as freely as any doctor, clergyman, or other individual following a profession. The liberty to earn a living anywhere by an honest vocation is one of the fundamental privileges of the people of a free country; but it will hardly be believed that in the present day, and in such a country as Scotland, a man, by crossing a neighbouring rivulet within, it may be, a stone's cast of his writing chambers, is practically just as much precluded from exercising his profession in the territory upon which he enters as if he had been dropped upon the plains of Lombardy or Provence; and this although he has received the same general and legal education, pays similar duties to government, and enjoys the same personal status as the neighbour upon whose domain, should he earn a guinea there, he will be held to be a poacher! and in the courts of which, moreover, if he perchance venture to open his mouth, he will probably be received by the presiding Minos with the gruff interrogatory of "Who are you?" As matters stand at present, a Scottish solicitor is in precisely the same position as the Scottish workman was before the abolition of guilds and crafts in 1847, who had only freedom to work in the place where he had learned his trade. An English workman, however, who had served an apprenticeship of seven years, as we have already mentioned, could follow his calling in any part of England. It is the same thing with an English solicitor. His Scottish brother, however, would require to present a petition, undergo an examination, and pay separate fees in the courts of every county in Scotland, before he could say that he was entitled to practise over the kingdom. In the courts of some localities he would not be admitted at all, simply because he had not served an apprenticeship there; and in others he could not gain admittance

the peace could, as has already been shown, be punished by fine or imprisonment. The condition of certain classes, indeed, was

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unless his means were more ample than those which usually fall to the lot of young lawyers.

Scotsmen have often been twitted with possessing a propensity to invade other countries, like the Philistines of old. Is it surprising that they should be ready to seek elsewhere a field for exertion when they are virtually denied freedom to labour at home, mindful both of the fate in store for those who remain in some obscure nook of their native land, and of the cutting lines of Pope—

"The mouse that is confined to one poor hole,
Can never be a mouse of any soul."

In France there is no distinction of Bars, except that gained by the collective eminence of the men who compose them, so that let him be a counsellor of Lyons or Toulouse, of Nancy or of Orleans, the French *avocat* occupies the same position, and is as much entitled and qualified to become a member of the Paris Bar, as any pleader there. In point of fact, the best men of the Imperial Courts of Paris—such as Pinard and others—have been recruited from the provinces. But what is the system in Scotland? In Glasgow, for example, a young man say, of twenty-one, by entering the Faculty of Procurators is entitled to practise the profession of the law in that city, but nowhere else, by paying £116 11s. 0d., if he has served an apprenticeship of five years' under the charter of incorporation: if he has not done so, he must pay the sum of £241 11s. 0d. But if he happen to have been born under a star which guides him to the lucky position of being at the same time a son or son-in-law of a member of Faculty, and also a duly indentured apprentice, the fortunate youth can congratulate himself upon being able to purchase the important privilege of earning his daily bread in Glasgow for the sum of £84. Should he, however, not happen to possess the character of an apprentice, but to have acquired the still more valuable distinction of being the husband of the daughter of a member, he will be permitted to join this

somewhat esoteric fraternity by paying £104; which privilege, upon the principle of the celebrated division of prey in the fable, he will also take in his character of lion, as conferred by a charter which professes to convey to a few individuals the inalienable right of every Scotsman, Englishman, Irishman, in short, of every British subject, to the free and unfettered exercise in the City of Glasgow of any legal gifts or talents he may chance to possess!

It required a prevision eminently Scottish, probably in part due to the wives of members enjoying a slice of the Faculty funds, to make such a *siccar* entail of the intellectual patrimony of the country. We say *Scottish*, because although no men probably more keenly relish the idea of the perfect propriety of making comfortable places for younger sons than certain classes of Englishmen, it is not generally understood that they carry the principle, or, as some say, the want of it, so far as to hold out a premium such as we have been referring to as a marriage portion for the espousal of their daughters.

An attempt was made about a year ago by Mr. William Burns, one of the most eminent and liberal minded members of the Glasgow Faculty, to modify the amount of its fees and the rigour of its rules, but without effect. It would have been better had the Faculty yielded gracefully to the solicitations of that gentleman, what the force of public opinion will ere long effect in the shape of an Act of Parliament. Although Mr. Burns has not been successful in this respect, he may be congratulated upon having, by a happy combination of excellent qualities, secured the respect and esteem of a wide circle of friends, as evinced by their lately presenting him with a bust of himself in enduring marble, from the studio of that rising sculptor Mr. George E. Ewing, a nobler reward, we have no doubt, in his estimation than the professional gain referred to by the satirist—

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Slavery of
colliers and
salters in
Scotland.

Scottish
cases involv-
ing right to
colliers.

that of actual serfs. The Acts of 1606, c. 11, and 1661, c. 38 (i), sanctioned what was called the astriction to the soil of colliers and salters. They were considered, in fact, as part of and sold along with the works at which they were employed. The law of Scotland is thus stated by Mr. Erskine: "These," he says, "are by the law itself, without any paction, bound, merely by their entering upon work in a colliery or salt manufactory, to the perpetual service thereof; and if the owner sell or alien the ground upon which the work stands, the right of the service of these colliers, salters, &c., passes over to the purchaser as a *fundo annexum* without any express grant" (k).

In a competition before the sheriff of Lanarkshire for the possession of colliers, the sheriff found "that the men did work as colliers at the pursuer's coal of Stonelaw, which is his property, before they wrought at the defender's coal of Corsehill, and therefore that they *belonged to the pursuer in property*, and ordered the defender to deliver up the said colliers." The Court of Session, however, reversed this decision, and found "that the colliers are not bound to the tacksman, but *to the coal* in which they wrought, during the currency of the tack" (l). In another case it was held that a boy who enters into a coal-work where his father is a bondsman, becomes a slave, not by consent, but from the nature of the slavery, which extends from father to son, and from which rule practice has introduced an exception with respect to children who abstain from working (m). These slaves of the soil only received their freedom in 1775, by the Act of Parliament 15 Geo. III. c. 28 (n), three years after the Court of King's Bench had decided in the celebrated case of Somerset (o) that a negro gained his freedom on landing in England. That Act proceeds upon the following preamble:—"Whereas by the statute law of Scotland, as explained by the judges of the courts of law there, many colliers and coal-bearers and salters are in a state of slavery or bondage, bound to the collieries and salt-works,

(i) 1606, c. 11; 1661, c. 38.

(j) "Tack" is a Scottish law term for lease. Spence Morrison's Dictionary of Decisions, p. 2360

(k) Ersk., b. i. t. 7, s. 61.

(m) Sir James Clarke, ib. p. 2361.

(n) 15 Geo. III. c. 28.

(o) 11 State Tr. 340; Loft's Rep. 1.

... "Verum deprendere messem
Si libet, hinc centum patrimonialia caudicorum
Parte alia solum russati pone Lacerta;" (g)

(g) "But if you would discover the profit, put the patrimony of an hundred

lawyers on one side, and on the other that of the red-clad Lacerta (h) only."
—Juven. Sat. vii. 110.

(h) Supposed to have been a wealthy coachman of the Emperor Domitian.

where they work for life, transferable with the collieries and salt-works when their original masters have no further use for them." I. CIVIL AS AFFECTING WORKMEN, &c.
 The freedom, however, which was conferred by this Act could only be obtained by a decree of the Sheriff Court of the county in which the collier claiming it resided. It is a remarkable proof of the degrading influence of bondage, that the colliers had actually become so indifferent to liberty as in very many cases not to have put themselves to the trouble of going through the form necessary for obtaining it. In consequence another Act was passed, viz., the 39 Geo. III. c. 56, proceeding upon the preamble that "many colliers, coal-bearers, and salters were bound for life to, and transferable with, the collieries and salt-works where they worked, but by the said Act their bondage was taken off and they were declared to be free, under the conditions therein mentioned; notwithstanding which many colliers and coal-bearers still continue in a state of bondage from not having complied with the provisions, or from having become subject to the penalties, in the said Act" (p).

There are doubtless persons still living who were born while slavery was one of the recognized institutions of Scotland, and many whose fathers were just as much slaves, except that they could be sold only along with the property on which they worked, as those who lately toiled on the burning plains of Carolina!

It is stated in the "Life of Hugh Miller" that (q) "so late as 1842, when Parliament issued a commission to inquire into the results of female labour in the coal-pits of Scotland, there was a collier still living that had never been twenty miles from the metropolis, who could state to the commissioner that his father, grandfather, and himself were slaves, and that he had wrought for years in a pit in the neighbourhood of Musselburgh where the majority of the miners were also serfs." The biographer adds, p. 72, "The colliers carried in their faces the too certain index at once of their social and intellectual condition, being mostly of that type to which a very strong resemblance is found in the prints of savage tribes. The effect of the emancipation of these poor creatures has been, that in less than a quarter of a century this type of face has disappeared in Scotland."

The condition of certain classes in England called villeins was

(p) 39 Geo. III. c. 56.

(q) Life of Hugh Miller, by Brown, 1858, p. 71.

I. CIVIL AS AFFRONTING WORKMEN, &c. much the same as that of the colliers and salters in Scotland, up to about the latter end of the reign of Queen Elizabeth. If they were what was called villeins *regardant*, they passed with the manor or land to which they were annexed by a right similar to that referred to by Erskine as being *fundo annexum* in Scotland; but they could be severed at the pleasure of the lord. If they were villeins *in gros* they were hereditaments or chattels real according to the lord's interest, being descendible to the heir when the lord was absolute owner, and transmissible to the executor when he had only a term of years in him. The slavery extended to the issue if both parents were villeins, or if the father only was a villein. It died out in England without any declaratory enactment (*r*).

Villeins in England.

Predial servitude in France.

It seems that predial servitude was not abolished in France till the Revolution, although so long ago as 1315 and 1318 Louis Hutin and Philip the Long issued ordinances declaring, "that as all men were by nature free-born, and as their kingdom was called the Kingdom of Franks, they determined that it should be so in reality as well as in name, therefore they appointed that enfranchisements should be granted throughout the whole kingdom upon just and reasonable conditions" (*s*).

Attempt to introduce slavery in England by 1 Edward VI. c. 3.

In referring to the relations between masters and servants, Blackstone says—"The law of England abhors and will not endure the existence of slavery within this nation, so that when an attempt was made to introduce it by statute 1 Edward VI. c. 3 (*t*), which ordained "that all idle vagabonds should be made slaves, and fed upon bread and water or small drink and refuse meat; should wear a ring of iron round their necks, arms, or legs; and should be compelled, by beating, chaining, or otherwise, to perform the work assigned them, were it never so vile—the spirit of the nation could not brook this condition even in the most abandoned rogues, and therefore this statute was repealed in two years afterwards" (*u*). Further on, however, he enunciates a doctrine which assimilates pretty closely to the law as it appears to have existed in Scotland. "Yet," he says, "with regard to any rights which the master may have lawfully acquired to the perpetual service of John or Thomas, these will remain exactly in the same state as before, for this is no more than the same state of

Opinion of Blackstone as to validity of obligation of perpetual service.

(*r*) Smith on Law of Master and Servant; Introd. V., sections 1 and 4, and note 20; ib. citing Ordon, tome i. pp. 583, 653.

(*s*) Robertson, Introd. to Hist. Chas. (*t*) 1 Edward VI. c. 3.

(*u*) Black. Comm., vol. i. p. 425.

subjection for life which every apprentice submits to for the space of seven years, or sometimes for a longer term."

The meaning of the above statement is not very clear, nor is there any authority referred to. Among the Romans there were indeed two classes of servants: *servi*, who might be bought and sold as goods—in short, absolute slaves; and *adscripti* or *adscriptitii*, who were bound to perpetual service in cultivating a particular field or farm, but who could not be sold by the master without transferring the farm itself. This species of servitude is recognized by the "Regiam Majestatem" (v), which Scottish legal antiquarians maintain to be a compilation from the "Regiam Potestatem," or a collection of the old laws of England by Glanville. Sir Walter Scott says that "it was compiled with the artful design of palming upon the Scotch Parliament, under the pretence of reviving their ancient jurisprudence, a system as nearly as possible resembling that of England" (w). But however this may be, it is certain that Mr. Erskine's notion of the law upon this subject is the same as that of Blackstone, for he says—"It has been said by some writers that one cannot bind himself to perpetual service, such obligations being contrary to liberty, which is an inalienable right; but it is hard to conceive how an engagement of that sort, which is to last for life, is more inconsistent with liberty than one which is to expire after twenty or thirty years; and there appears nothing repugnant either to reason or to the peculiar doctrines of Christianity in a contract by which one binds himself to perpetual service under a master, who on his part is obliged to maintain the other in all the necessaries of life."—Grot. De Jure Bell., l. ii. c. 5, s. 27 (x).

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Servitude among the Romans.

Species of servitude recognized by "Regiam Majestatem."

Opinion of Erskine and Blackstone coincident as to validity of obligation of perpetual service.

The remarkable similarity in the laws of the two countries, and in the current of thought of these two eminent jurists, is further exemplified by the following passages:—"This, however," says Erskine, in continuation of the same subject, "is certain, that excepting either the case of Turks or Moors made slaves by way of reprisal, or of negroes bought for the use of the European settlements in the Indies, the power claimed by masters of selling their servants is not allowed in any Christian country; and by the practice of Holland, negro slaves, as soon as they set their

Similarity in the views of the English and Scottish jurists as to personal liberty.

(v) Reg. Maj., l. ii. c. 12, s. 4, 5. Quon. Atta., c. 56.

(w) Scott's Border Antiquities;

prose works, vii. 30. Stair, b. i. t. 1, s. 16; and b. ii. t. 4, s. 27.

(x) Ersk. Inst., b. i. t. 7, s. 62.

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foot on the Dutch territory, may assert their freedom from servitude in spite of their masters."—Voet ad Tit. de Stat. Hom. s. 3 (y).

Blackstone says—"The law of England acts upon general and extensive principles: it gives liberty rightly understood, that is, protection to a Jew, or Turk, or a Heathen, as well as to those who profess the true religion of Christ; and it will not dissolve a civil obligation between master and servant on account of the alteration of faith in either of the parties, but the slave is entitled to the same protection in England before as after baptism, and whatever service the heathen negro owed to his American master by general, not by local law, the same, whatever it be, is he bound to render when brought to England and made a Christian" (z).

Case of the
negro James
Somerset in
England,
1772.

But the Common Pleas, so late as the 5th of William and Mary, held that a man might have a property in a negro boy, and could bring an action of trover for him, *because negroes were heathens* (a). It was decided, however, in 1772, in the celebrated case of James Somerset, that a heathen negro when brought to England owed no perpetual service to an American or any other master. James Somerset had been made a slave in Africa, and was sold there. From thence he was carried to Virginia, where he was bought and brought by his master to England. He ran away. His master seized him and carried him on board ship, where he was kept in order to be sent to Jamaica to be sold as a slave. While he was thus confined Lord Mansfield granted a *habeas corpus*, ordering the captain of the ship to bring the body of James Somerset, and to show cause why he was detained. The circumstances being stated upon the return to the writ, after much learned discussion in the Court of King's Bench, the judges were unanimously of opinion that the return was insufficient, and that Somerset ought to be discharged (b).

This case was decided four years after the death of Erskine, and eight before that of Blackstone, the first volume of the "Commentaries" having appeared seven years before the date of the decision. The "Institutes" of Erskine were published in the year following the decision of Somerset's case, viz., 1773. Three years afterwards was passed the Act 15 Geo. III. c. 28 (c), freeing colliers and salters in Scotland from slavery; and in 1778 the

(y) Ersk. Inst., b. i. t. 7, s. 62.

(a) Lord Raymond, 147.

(z) Black. Comm., vol. i. p. 425.

(b) State T. 340. Loft's Reports, 1.

(c) 15 Geo. III. c. 28.

principle that a negro slave was free as soon as he set foot on Scottish soil was established in the case of *Knight v. Wedderburn* (d).

This case will always possess an interest for the general reader from the fact of Dr. Johnson, at Boswell's request, who was one of the counsel for the negro, having dictated an argument for him. "After supper," says that prince of biographers, "I accompanied him to his apartment, and at my request he dictated to me an argument in favour of the negro who was then claiming his liberty in an action in the Court of Session in Scotland. He had always been very zealous against slavery in any form, in which I, with all deference, thought that he discovered 'a zeal without knowledge.' Upon one occasion when in company with some very grave men at Oxford, his toast was, 'Here's to the next insurrection of the negroes in the West Indies.' His violent prejudice against our West Indian and American settlers appeared whenever there was an opportunity" (g).

The argument dictated by Dr. Johnson was as follows:—

"It must be agreed that in most ages many countries have had part of their inhabitants in a state of slavery, yet it may be doubted whether slavery can ever be supposed the natural condi-

(d) *Morrison's Dictionary of Decisions*, p. 14545.

The same question had come before the Court of Session in Scotland in 1757, in the case of *Robert Sheddan v. James Montgomerie Sheddan*, a negro, reported in the Supplement to *Morrison's Dictionary*, vol. v., part 3, p. 324. This case is reported in *Fac. Coll. (Mor., 14545.)* Lord Kilkerran (e) has the following note upon the papers:—"The Lords generally inclined to find that the negro was not manumitted by his being brought to Scotland, but agreed to pass this bill that the point might be in the most solemn manner determined, and on a further motion from the negro, a hearing in presence was appointed."

"January 4, 1757, *Mors ultima linea rerum.* (f) There the servant shall be free from his master.

"The poor young man is dead, and so has put an end to the question what influence Christian charity or love to our neighbour, whatever his colour is, ought to have."

(g) *Boswell's Life of Johnson*, vol. iii. p. 136. London, Routledge & Co., 1856.

The worthy Doctor would have to a certainty joined Mr. Mill and the other prosecutors of Governor Eyre, for the murder of Mr. Gordon during the late insurrection in Jamaica, had he been living now, and as surely would Boszy have subscribed to the Defence Fund, unless terror of the Doctor would have restrained him. Upon the point of slavery he seems to have differed with Johnson *toto celo*. Can it be that the laird of Auchinleck was interested in West Indian estates?

(e) Sir James Fergusson, of Kilkerran, Bart., was eldest son of Sir John Fergusson, of Kilkerran, Ayrshire, passed advocate 1711, appointed a lord of justiciary 1749, died 1769. He collected the Decisions of the Court of Session from 1738 to 1758. They were pub-

lished in 1775. The present Sir James Fergusson, Bart., one of the under secretaries of state for the Home Department, is his great grandson.

(f) "Death is the utmost limit of the race." —Horat. Ep. 16. 79.

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AFFECTING
WORKMEN,
&c.

Case of the
negro
Joseph
Knight in
Scotland,
1778.

Dr. John-
son's argu-
ment for the
negro in
Knight v.
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son's argu-
ment for the
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burn.

tion of man. It is impossible not to conceive that men in their original state were equal, and very difficult to imagine how one would be subjected to another but by violent compulsion. An individual may, indeed, forfeit his liberty by a crime, but he cannot by that crime forfeit the liberty of his children. What is true of a criminal seems true likewise of a captive. A man may accept life from a conquering enemy on condition of perpetual servitude; but it is very doubtful whether he can entail that servitude on his descendants, for no man can stipulate without commission for another. The condition which he himself accepts, his son or grandson perhaps would have rejected. If we should admit, what perhaps may with more reason be denied, that there are certain relations between man and man which may make slavery necessary and just, yet it can never be proved that he who is now suing for his freedom ever stood in any of those relations. He is certainly subject by no law but that of violence to his present master, who pretends no claim to his obedience but that he bought him from a merchant of slaves, whose right to sell him never was examined. It is said that, according to the constitutions of Jamaica, he was legally enslaved. These constitutions are merely positive, and apparently injurious to the rights of mankind; because whoever is exposed to sale is condemned to slavery without appeal, by whatever fraud or violence he might have been originally brought into the merchant's power. In our own times princes have been sold by wretches to whose care they were intrusted that they might have an European education; but when once they were brought to a market in the plantations, little would avail either their dignity or their wrongs. The laws of Jamaica afford a negro no redress. His colour is considered as a sufficient testimony against him. It is to be lamented that moral right should ever give way to political convenience. But if temptations of interest are sometimes too strong for human virtue, let us at least retain a virtue where there is no temptation to quit it. In the present case there is apparent right on one side, and no convenience on the other. Inhabitants of this island can neither gain riches nor power by taking away the liberty of any part of the human species. The sum of the argument is this:—No man is by nature the property of another. The defendant is therefore by nature free. The rights of nature must be some way forfeited before they can be justly taken away. That the defendant has

by any act forfeited the rights of nature we require to be proved; and if no proof of such forfeiture can be given, we doubt not the justice of the court will declare him free" (h). I. CIVIL AS AFFECTING WORKMEN, &c.

The facts of this celebrated case, as reported by Mr. Morrison in his "Dictionary of Decisions," are as follows (i):—

The commander of a vessel in the African trade having imported a cargo of negroes into Jamaica, sold Joseph Knight, one of them, as a slave to Mr. Wedderburn. Knight was then a boy, seemingly about twelve or thirteen years of age. Morrison's report of Knight v. Wedderburn.

Some time after Mr. Wedderburn came over to Scotland, and brought this negro along with him as a personal servant.

The negro continued to serve him for several years without murmuring, and married in the country; but afterwards, prompted to assert his freedom, he took the resolution of leaving Mr. Wedderburn's service, who being informed of it, got him apprehended on the warrant of a justice of peace. Knight on his examination acknowledged his purpose. The justices found "the petitioner entitled to Knight's services, and that he must continue as before."

Knight then applied to the sheriff of the county (Perthshire) by petition, setting forth "that Mr. Wedderburn insisted on his continuing a personal servant with him," and prayed the sheriff to find "that he cannot be continued in a state of slavery or compelled to perpetual service, and to discharge Mr. Wedderburn from sending the petitioner abroad."

After some procedure in this process the sheriff found, "that the state of slavery is not recognized by the laws of this kingdom, and is inconsistent with the principles thereof; that the regulations in Jamaica concerning slaves do not extend to this kingdom, and repelled the defender's claim to a perpetual service." Mr. Wedderburn having reclaimed, the sheriff found "that perpetual service without wages is slavery, and therefore adhered."

The defender removed the cause into the court by advocacy. The lord ordinary took it to report upon informations. Being a question of general importance, the court ordered a hearing in

(h) Boswell seems to have formed a very strong opinion upon the subject of slavery, for he says—"I record Dr. Johnson's argument fairly upon this particular case, where, *perhaps*, he was in the right. But I beg leave to enter

my *most solemn protest* against his general doctrine with respect to the *slave trade*. For I will resolutely say that his unfavourable notion of it was owing to prejudice and imperfect or false information." Poor Bozzy!

(i) Dictionary, p. 14545, et. seq.

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presence, and afterwards informations of new upon what it was advised.

PLEADED FOR THE MASTER.—That he had a right either to the perpetual service of the negro in this country, or to send him back to the plantations from which he was brought. His claim over the negro to this extent was argued on the following grounds:—

The productions of the colonies, ever since they were settled, have been cultivated by the means of negro slaves imported from the coast of Africa. The supplying the colonies with these slaves has become an extensive trade; without which the valuable objects of commerce now furnished by the plantations could not be cultivated. British statutes have given sanction to the trade, and recognized the property of the master in such slaves (10 Will. III. c. 26; 5 Geo. II. c. 7; 23 Geo. II. c. 3).

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report of
Knight v.
Wedderburn.

The property which, in Jamaica, was established in the master over the negro under these statutes and the municipal law there, cannot be lost by mere change of place. On principles of equity, rights acquired under the laws of foreign countries are supported and enforced by the courts of law here. A right of property will be sustained in every country where the subject of it may come. The *status* of persons attend them wherever they go (Huber, lib. i. t. 3, c. 12). The law of the colonies is not to be considered as unjust in authorizing this condition of slavery. The statutes which encourage the African trade, show that the legislature does not look on it in that light. The state of slavery is not contrary to the law of nations. Writers upon that law have enumerated several just and lawful origins of slavery, such as contract, conquest in a just war, and punishment of crimes. In cases where slavery is authorized by the laws of Jamaica, it must be presumed to have proceeded on a lawful origin. The municipal law of no country will be presumed unjust.

A state of slavery has been universally received in the practice of nations. It took place in all the ancient nations, and in all the modern European nations, for many ages. In some of them it still remains; and in none of them has it been abolished by positive enactments, declaring it unjust and illegal, but it has gone into disuse by degrees, in consequence of many different causes. Though, therefore, the municipal law of this country does not now admit of the state of slavery in the persons of citizens, yet, where

foreigners in that state are brought into the country, the right of their masters over them ought not to be annihilated.

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In this case the master is not insisting for the exercise of any rigorous powers. He only demands that he shall be entitled to the personal services of the negro in this country during life. His right, to this extent at least, is not immoral or unjust; nor is it even reprobated by the municipal law of this country. A person may bind himself to service for life (Ersk. Inst., b. i. t. 7, s. 62).

But in the *last* place, if this is denied, the master must, at least, be permitted to compel the negro to return to the plantations from whence he was brought, otherwise he is entirely forfeited of his right.

Some cases from the English law books were adduced to show that, in England, the master's right of property in his negro remained after he was brought into that country—Butts *contra* Penny, 1677; Keble's Rep. p. 3, p. 785; Gilly *contra* Cleves; 5 Will. & Mary; Lord Raymond, Rep. 5, p. 147; and the opinion of two very eminent lawyers, in the year 1729, Sir Philip York, then attorney general, and Mr. Talbot, solicitor general, in these words:—"We are of opinion that a slave, by coming from the West Indies, either with or without his master, to Great Britain or Ireland, doth not become free; and that his master's property or right in him is not thereby determined or varied; and baptism doth not bestow freedom upon him, nor make any alteration in his temporal condition in these kingdoms. We are also of opinion that the master may legally compel him to return to the plantations."

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ANSWERED FOR THE NEGRO.—The only title on which any right of dominion is claimed over this African, is the institution of the municipal law of Jamaica, which authorizes the slavery of Africans brought into that island. Under that law, this negro, a child when brought into Jamaica, while he remained there, was subject to the unjust dominion which it gives over these foreigners; but the municipal law of the colonies has no authority in this country. On grounds of equity, the court, in some cases, gives effect to the laws of other countries; but the law of Jamaica, in this instance, will not be supported by the court, because it is repugnant to the first principles of morality and justice.

Subordination, to a certain extent, is necessary; but there are certain bounds, beyond which if any institution, subjecting one

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individual to another, should go, the injustice and immorality of it cannot admit of a doubt. Such is the institution of slavery, depriving men of the most essential rights that attend their existence, and which are of a nature that admit not of any equivalent to be given for them. The most express consent, given in a voluntary contract, cannot authorize the assuming of these rights, or bind the consenting party to submit to the condition of a slave. A stipulation of that kind affords intrinsic evidence of an undue advantage taken, and is therefore sufficient to void the contract.

But, although it were justifiable to admit of a slavery proceeding on a title of contract, of conquest, or of punishment, the law of Jamaica would not be the less unjust. In subjecting the Africans to slavery, that law requires no title under any of these grounds. The circumstance, that the negroes are brought into Jamaica, is all that is requisite to fix on them indiscriminately the condition of slavery. It is, therefore, a slavery established by force and usurpation alone, which no writer on the law of nations has vindicated as a justifiable origin of slavery.

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If the law of Jamaica had made any distinction, or required any title to the slavery of an African, this negro would never have been reduced by it to that state. Being a child when he was brought into Jamaica, he could enter into no contract, commit no crime, and conquest cannot give a right to kill or enslave children.

The means by which those who carried this child from his own country got him into their hands, cannot be known; because the law of Jamaica makes no inquiry into that circumstance. But, whether he was ensnared, or bought from his parents, the iniquity is the same. That a state of slavery has been admitted of in many nations does not render it less unjust. Child murder and other crimes of a deep dye have been authorized by the laws of different states. Tyranny and all sorts of oppression might be vindicated on the same grounds. Neither can the advantages procured to this country, by the slavery of the negroes, be hearkened to as any argument in this question, as to the justice of it. Oppression and iniquity are not palliated by the gain and advantage acquired to the authors of them. But the expediency of the institution, even for the subjects of Great Britain, is much doubted of by those who are best acquainted with the state of

the colonies; and some enlightened men of modern times have thought, that sugar and tobacco might be cultivated without the slavery of negroes. The dominion, therefore, given by the law of Jamaica over the pursuer, a foreigner there, being unjust, can receive no aid from the laws of this country. The modification proposed of this claim of slavery makes no difference on the merits of the question. It is plain, that, to give the defender any right over the pursuer, the positive law of Jamaica must always be resorted to; consequently, the question recurs, whether that law ought to be enforced beyond its territory. But a service for life, without wages, is in fact slavery. The law of Scotland would not support a voluntary contract in these terms; and, even when wages are stipulated, such a contract has been voided by the court. (Allan & Mearns *contra* Skene & Burnet, No. 5, p. 9454, *voce* PACTUM ILLICITUM.)

The answer was given to the other claim, of sending the negro out of this country without his consent, that it supposes the dominion given over the pursuer by the law of Jamaica to be just. The negro is likewise protected against this by the Statute 1701, c. 6, which expressly prohibits the carrying any persons out of the kingdom without their consent. The words are general, and apply to all persons within the realm. In support of this argument for the negro, authorities of French writers were adduced to show that formerly, by the laws of France, negroes brought into that country from the plantations became free. This was their law, until lately that, by special edicts, some alterations were made upon it (Denisart, tom. 3. v. NEGRO). On the law of England several cases were mentioned, in which different judges had expressed opinions, that a negro coming into England is free there (1 Salh. 666, Smith *contra* Brown & Cooper; Shanley *contra* Nalvey, in Chancery, 1762; Hargrave's Arg. p. 58).

But the case of Somerset, the negro, decided in the King's Bench in the year 1772, was chiefly relied on, and said to be in point, at least upon that question, Whether the negro could be sent out of England?

The COURT were of opinion, that the dominion assumed over this negro, under the law of Jamaica, being unjust, could not be supported in this country to any extent; that, therefore, the defender had no right to the negro's service for any space of time, nor to

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send him out of the country against his consent: that the negro was likewise protected under the Act 1701, c. 6, from being sent out of the country against his consent. The judgments of the sheriffs were approved of, and the court "remitted the cause *simpliciter*."

Boswell's ac-
count of
Knight's
case.

Thus the argument for the negro prevailed, and as has been wittily observed, the plaintiff was *knighted* with the order of freedom. Boswell afterwards refers to the case in the following terms (*j*): "About this time (*k*) I wrote to Johnson giving him an account of the decision of the *negro cause* by the Court of Session, which, by those who hold even the mildest and best regulated slavery in abomination (of which number I do not hesitate to declare that I am none), should be remembered with high respect, and to the credit of Scotland; for it went upon a much broader ground than the case of Somerset, which was decided in England (*l*); being truly the general question, whether a perpetual obligation of service to one master in any mode should be sanctioned by the law of a free country. A negro, then, called *Joseph Knight*, a native of Africa, who having been brought to Jamaica in the usual course of the slave trade, and purchased by a Scotch gentleman in that island, had attended his master to Scotland, where it was *officiously suggested* to him that he would be found entitled to his liberty without any limitation. He accordingly brought his action, in the course of which the advocates on both sides did themselves great honour. Mr. Maclaurin (*m*) has had the praise of Johnson, for his argument (*n*) in favour of the negro,

(*j*) Life of Johnson, p. 142. London, Routledge, 1856.

(*k*) 29th November, 1777. The case is reported in Mr. Morrison's Dictionary, under date 15th January, 1778, and Boswell's last letter to Johnson from Edinburgh is dated in November, 1777, at the end of which he says, "I am engaged in a criminal prosecution against a country schoolmaster for indecent behaviour to his female scholars. There is no statute against such abominable conduct, but it is punishable at common law. I shall be obliged to you for your assistance in this extraordinary trial." Life, p. 142.

(*l*) See State Trials, vol. xi. p. 339, and Mr. Hargrave's celebrated argument.

(*m*) Mr. John Maclaurin, afterwards a lord of Session by the title of Lord

Dreghorn. He was the son of Mr. Colin Maclaurin, an eminent mathematician, who was professor of Mathematics successively in the Universities of Aberdeen and Edinburgh. Lord Dreghorn published a series of remarkable criminal trials and other legal works. He also wrote several dramas. He died in 1796.

(*n*) Boswell has the following note with regard to this argument:—"The motto to it was happily chosen—

"*Quamvis ille niger quamvis tu candidus esses*" ('Although he might be black and thou mightst be white.'—Virgil, Eclog. 2, 16.)

"I cannot avoid mentioning a circumstance, no less strange than true, that a brother advocate in considerable practice, but of whom it certainly cannot be said '*Ingenuas didicit fideliter*

and Mr. Maconochie (o) distinguished himself on the same side by his ingenuity and extraordinary research. Mr. Cullen (p), on the part of the master, discovered good information and sound reasoning, in which he was well supported by Mr. James Ferguson (q), remarkable for a manly understanding, and a know-

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ardies' ('He has studied diligently polite learning.'—Ovid, P. 2, g. 47), asked Mr. Maclaurin with a face of flippant assurance, 'Are these words your own?'

(o) Allan Maconochie, afterwards one of the judges of the Court of Session, with the title of Lord Meadowbank, was son of Alexander Maconochie of Meadowbank. He was born in 1748, passed advocate 1770, appointed a judge 1796, died 1816. He was a man of very versatile talent and learning, and admittedly a remarkably able, although, as some think, perhaps rather speculative lawyer. His son, Alexander Maconochie, was afterwards a judge by the same title. As lord advocate, and in the House of Commons, he on one occasion administered a pretty severe rebuke to the late Daniel O'Connell, an operation not in itself very easily performed, but both well done and well deserved on the occasion in question. As a private gentleman Mr Maconochie long continued to reside in Edinburgh, and was distinguished for his love of art. His grandson, Allan Alexander Wellwood Maconochie, LL.D., was professor of Scots law in the University of Glasgow previous to the appointment of Professor Skene, who was succeeded by the present Professor Berry. Of Professor Maconochie the author desires to speak with the highest respect, and with a warm feeling of gratitude for his uniform kindness and courtesy, both as a teacher of law and as a private gentleman.

(p) Afterwards a lord of Session under the title of Lord Cullen. He was the son of Dr. William Cullen, the celebrated physician. Passed advocate 1764, raised to the bench 1796, died 1810. Was the author of several papers in the "Mirror" and "Lounger."

(q) The Fergussons, like the Dundases and some other Scottish families, seem to have *thirled*, i.e., attached

themselves, to the profession of the law. Besides Lord Kilkerran, there was James Fergusson of Pitfour, who was elevated to the bench in 1764 by the title of Lord Pitfour. The James Ferguson referred to in the text became a judge in the Consistorial Court of Scotland, now abolished, and was esteemed an able lawyer. He was the author of "Reports of some recent Decisions by the Consistorial Court of Scotland, in action of Divorce concluding for dissolution of marriages celebrated under the English laws, with an appendix containing the opinions of the judges."

There was also Robert Fergusson, afterwards of Raith, of whom and the late Professor George Joseph Bell, Lord Cockburn in his Memorials says, that they were "both eminent at last in the whig party."

We may also notice Robert Cutlar Fergusson of Craigdarroch, who went to the English Bar in 1797 and became attorney general at Calcutta. After an absence of some twenty years he returned to this country and was made judge advocate general. He died in 1838. But the Mr. Fergusson *par excellence* of that period was Mr. George Fergusson, afterwards Lord Hermand. Lord Cockburn, who married one of his nieces, makes frequent mention of him as being "one of the most singular, and indeed incredible, of our old originals." He was the son of Lord Kilkerran. Lord Cockburn says with regard to Hermand, "He was very intimate at one time with Sir John Scott, afterwards Lord Eldon. They were counsel together in Eldon's first important Scotch entail case in the House of Lords. Eldon was so much alarmed that he wrote his intended speech, and begged Hermand to dine with him at a tavern, when he read the paper and asked him if he thought it would do. 'Do, sir? It is delightful, absolutely delightful. I could listen to

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it for ever. It is so beautifully written, and so beautifully read; but, sir, it's the greatest nonsense! It may do very well for an English chancellor, but it would disgrace a clerk with us.' He told me the blunder, and though gross for a Scotch lawyer, it was one that an English counsel would easily commit. Many a bottle of port did he and Eldon discuss together." (Memorials, pp. 135, 136.) Lord Cockburn relates another story of Hermand. He says, "There was a case about a lease where our court thought itself entitled in equity to make a new contract for parties different from the one which the parties had made for themselves. The lord chancellor (Eldon) was of opinion that a clear clause in a contract ought always to be enforced, and remitted the matter to the court below for reconsideration. The result of Hermand's reconsideration was this:— 'Why, my lords, I beg to put a very simple question to the House of Lords. Suppose that the tenant had engaged to hang himself at the end of the lease, would their lordships enforce that?' Upon a second appeal, after reading the question aloud, Eldon, with ludicrous gravity, said, 'that he would endeavour to make up his mind upon the very important question put, when the case should come before their lordships in regular form;' and added, that he had great pleasure in remembering when his friend, George Fergusson, and he used to do battle at this Bar in Scotch causes, but that if he recollected right, his learned friend had not then the admiration of the Court of Session that he seemed to have acquired since. Hermand was pleased with the recognition, and exclaimed, 'And if he knew the truth, sir—though this is a secret—he would find that I had not got it yet.'"

The keeping of secrets of this kind has done no good to a court of which every Scotsman, and particularly every Scottish lawyer, feels justly proud, notwithstanding its admitted defects. Its annals are associated with the names of men equal in capacity to the judges of any tribunal; but it was high time that the secret of Hermand should no

longer be retained by its senators. It kept well; too well, indeed, for the reputation of the court. "The man and the hour," however, have at length come; a judge has appeared who has refused to have his eyes bandaged, or to hide the rottenness that was fast sapping the foundations of the old college of justice. Thereformation has begun; where it will end no man can tell. Posterity will, however, recognize Lord Ormisdale as its Luther.

There is a good story told of Hermand not mentioned by Lord Cockburn, but which used to be related with great unction by the late Mr. Alexander Morrison of Ballinakill, dean of the Faculty of Procurators in Glasgow, in whose office the author was introduced into the ramifications of Glasgow practice, and whom he will ever remember as a most able and kindly instructor and genial man, as well as a steadfast friend in after life. In describing the first Lord Meadowbank, Lord Cockburn mentions an incident which occurred on an occasion when Mr. Thomas Walker Baird was pleading before him. He says, "Mr. Thomas Walker Baird was, in a dull technical way, stating a dry case to his lordship, who was sitting single. This did not please the judge, who thought that his dignity required a grander tone. So he dismissed poor Baird, than whom no man could have a less turn for burning in the forum, by throwing himself back in his chair, and saying, 'Decclaim, sir! Why don't you declaim? Speak to me as if I were a popular assembly.'" It is to this Mr. Baird and Hermand that Mr. Morrison's story relates. Mr. Baird was in those days in considerable practice as a conveyancing counsel, and much consulted in questions where an intimate knowledge of feudal law was required; a position which, in later years, was taken up by Mr. John Marshall, now Lord Curriehill. Mr. Baird happened to be pleading one day before Hermand, whom he seemed to have pleased as little as Meadowbank, for at last the laborious pleader saw his lordship in the act of bundling up his papers, and evidently not listening to what he was saying. "But, ma

praise the speech which Mr. Henry Dundas (t) generously con-

lord," said Mr. Baird, in consternation, "I'm no *exhausted* yet," meaning, of course, that he had not exhausted the case; to which Hermand, in a deep growl, replied, "But *I am*," and so closed the debate.

Lord Brougham is probably now the only living man who figured as an actor in the scenes so graphically described by Lord Cockburn. We cannot resist alluding to a scene which took place between Brougham, then a young man at the Scottish Bar, and Lord Justice Clerk Eskgrove, of whom Lord Cockburn says, "A more ludicrous personage could not exist. People seemed to have nothing to do but to tell stories of this one man. To be able to give an anecdote of Eskgrove, with a proper imitation of his voice and manner, was a sort of fortune in society." He gives the following illustration:—"As usual then with stronger heads than his, everything was connected by his terror with republican horrors. I heard him, in condemning a tailor to death for murdering a soldier by stabbing him, aggravate the offence thus:—'And not only did you murder him, whereby he was bereaved of his life, but you did thrust, or push, or pierce, or project, or propel the le-thall weapon through the belly-band of his regimen-tal breeches, which were his *Majes-ty's*!'" (Memoirs, p. 122.) "He had to condemn two or three persons to die who had broken into a house at Luss, and assaulted Sir James Colquhoun and others, and robbed them of a large sum of money. He first, as was his almost constant practice, explained the nature of the various crimes, assault, robbery, and hamesucken (assaulting a person in his own house), of which last he gave them the etymology, and he then reminded them that they attacked the house and the persons within it, and robbed them, and then came to this climax—'All this you did, and God preserve us! joost when they were sitten doon to their dinner'" (p. 124). "Brougham tormented him, and sat on his skirts wherever he went for about a year. The justice liked passive counsel, who let him dawdle

on with culprits and juries in his own way, and, consequently, he hated the talent, the eloquence, the energy, and all the discomposing qualities of Brougham. At last it seemed as if a court-day was to be blessed by his absence, and the poor justice was delighting himself with the prospect of being allowed to deal with things as he chose, when lo! his enemy appeared: tall, cool, resolute. 'I declare,' said the justice, 'that man Broom, or Brougham, is the torment of my life.' His revenge, as usual, consisted in sneering at Brougham's eloquence, by calling it or him the *Harangue*. 'Well, gentlemen, what did the Harangue say next? Why, it said this [misstating it]; but here, gentlemen, the *Harangue* was most plainly wrongg, and not intelligible'" (p. 122).

What reflections rush across the mind in turning one's thoughts from these incidents to the closing scene of all, to that lone man by the pebbly shore of the blue Mediterranean billow—the last frail link of a glorious chain which must soon slip its earthly rivet—far from the scenes of his youthful hopes, and the triumphs of manly struggles! All gone who were his peers in youth and his rivals in ripened manhood—Jeffrey, Cockburn, Horner, and Smith, Denman, Lyndhurst, and Campbell. Wandering in mind, decrepit in body, where are now the talent, the eloquence, and the energy—the power that shook the senate and entranced the crowd? Lost? No—fled. Gone, as we hope, before, but leaving the frame of what once was a god, to mark scarce the form of a man! Would that it had not been so! Would that he had died when the flame was bright, rather than we should see his sun go down in darkness deeper than that of the tomb! But it was not to be thus. And though we weep o'er the ruin, we cannot restore the glory of the mind that is now a wreck!

"We change, and others change,
And fond memory would fain renew
What it can but recall."

(t) Afterwards Viscount Melville. He subsequently held the offices successively of lord advocate, joint

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tributed to the cause of the sooty stranger. Mr. Dundas' Scottish accent, which has been so often in vain obtruded as an objection to his powerful abilities in Parliament, was no disadvantage to him in his own country; and I do declare, that upon this memorable question he impressed me, and, I believe, all his audience, with such feelings as were produced by some of the most eminent orations of antiquity. This testimony I liberally give to the excellence of an able friend, with whom it has been my lot to differ very widely upon many political topics, yet, I persuade myself, without malice. A great majority of the lords of Session decided for the negro. But four of their number—the Lord President (*u*), Lord Elliott (*v*), Lord Monboddo (*w*), and Lord Covington (*x*)—resolutely maintained the lawfulness of a status which has been acknowledged

keeper of the Signet, treasurer of the Navy, president of the Board of Control, home secretary, and first lord of the Admiralty. He was son of Robert Dundas of Arniston, lord president of the Court of Session. Mr. Dundas belonged to a family of lawyers. Sir James Dundas of Arniston was appointed a lord of Session in 1662, when he assumed the title of Lord Arniston; his son, Robert Dundas, was made a judge by the same title in 1689; his son, Robert Dundas, was appointed lord president in 1748; his son Robert Dundas was made lord president in 1760; and his son was created lord chief baron of Exchequer in 1801. The chief baron was a brother of Mr. Henry Dundas. This is a succession which almost reminds one of the genealogical descent of the high priests of Judah.

(*u*) Robert Dundas of Arniston, the second lord president of that name, and the father of Henry Dundas, Viscount Melville, and of the lord chief baron of Exchequer.

(*v*) Sir Gilbert Elliott of Minto, Lord Minto. His father, Sir Gilbert, had also been a judge by the same title. Lord Minto was afterwards appointed lord justice clerk. He was the ancestor of the present noble family of Minto.

(*w*) James Burnett, son of James Burnett of Monboddo, Kincardineshire, was born 1714, admitted advocate 1737, and raised to the bench 1767; died 1799. He was the author of a

work "On the Origin and Progress of Language," and "Ancient Metaphysics." He advanced many curious theories, particularly one as to the affinity between the human race and the monkey tribe. Lord Cockburn says of him—"Classical learning, good conversation, and ingenious though unsound metaphysics, were the peculiarities of Monboddo. He was reputed a considerable lawyer in his own time, and his Reports show that the reputation was well founded. It is more common to hear anecdotes about his maintaining that men once had tails, and similar follies, than about his agreeable conversation and undoubted learning. All who knew him in Edinburgh concur in describing his house as one of the most pleasant in the place." (Memorials, p. 111.)

In a collection of humorous poetical pieces contributed to *Blackwood's Magazine*, lately published under the title of "Songs and Verses by an Old Contributor to *Maga*," the author of which is understood to be Lord Neaves, an eminent living judge of the Court of Session, there is a very racy effusion, each verse of which ends with the refrain of "Old Monboddo," the burden of which is to show that Monboddo anticipated many of those theories which at present pass for something more than "follies," as Lord Cockburn not perhaps unjustly calls them.

(*x*) Alexander Lockhart of Covington, Lanarkshire, son of George Lockhart of Carnwath, passed advocate

in all ages and countries, and that when freedom flourished, as in old Greece and Rome" (y).

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The principles enunciated in the pages of Blackstone and Erskine, received, in this manner, practical recognition by the supreme courts of the two countries, and thus the people of both, preceded by their two most eminent jurists, marched steadily forward, shoulder to shoulder, on their crusade of liberty, lighted by a torch kindled at the same altar, holding almost identical language, and stretching forth the same right hand of freedom to the oppressed and down-trodden sons of Africa. Let us not forget, however, that before our courts gave practical application to the principles of universal liberty, or the writings

1772, appointed dean of Faculty 1764, and lord of Session 1775. He died 1782. Two of his daughters were married to the two eldest sons of William, last earl of Kilmarnock, who was beheaded for the part he took in the rebellion of 1745.

(y) The eloquence which effected the downfall of slaveholding opinions in this country, lives to some extent in the published speeches of many of the celebrated orators of the period. The following short extract from an oration of one of the brightest of a bright and glorious band, Mr. Curran, is all we can give here:—"I speak in the spirit of British law, which makes liberty commensurate with, and inseparable from, British soil; which proclaims even to the stranger and the sojourner, the moment he sets his foot upon British earth, that the ground on which he treads is holy, and consecrated by the genius of universal emancipation. No matter in what language his doom may have been pronounced; no matter what complexion, incompatible with freedom, an Indian or an African sun may have burnt upon him; no matter in what disastrous battle his liberty may have been cloven down; no matter with what solemnities he may have been devoted upon the altar of slavery—the first moment he touches the sacred soil of Britain the altar and the god sink together in the dust; his soul walks abroad in her own majesty; his body swells beyond the measure of his chains that burst around him, and

he stands redeemed, regenerated, and disenthralled, by the irresistible genius of universal emancipation."

"Slaves cannot breathe in England; if their lungs
Receive our air, that moment they are free;
They touch our country, and their shackles
fall."

All this is very beautiful and very true; but our isolated condition and insular pride cause us, probably, to sound the praises of Old England a little too loud. We should reflect that the Dutch (whom we affect most to know through their supposed partiality for tulip bulbs, baggy breeches, and wide pocket holes), and also the French, were somewhat before us in the matter of proclaiming the principle of freedom to the slave. If we sung our psans, therefore, a little less frequently, we might probably acquire a higher character for national modesty than we at present enjoy. We are indebted to foreigners for a good deal more than some of us care to acknowledge, or many of us actually know. It would be well if we tried to acquire that gift so ardently prayed for by Burns—

"To see ourselves as others see us."

Dickens has helped us to realize this somewhat in "No Thoroughfare," when he makes Obenreizer say with exquisite irony, "Survey this English nation, and behold a tall, plump, and solid people! Look at their cities! What magnificence in their public buildings! What admirable order and propriety in their streets! Admire their laws, combining the eternal prin-

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of our lawyers had made them familiar to the nation, they were to be found recorded in the works of John Voet, of Utrecht, as evidence that they had previously inspired the law and practice of Holland. Thus, the Roman law, which still prevails in that country, by which the institution of slavery even in ancient times was regulated upon principles wonderfully humane for that period of the world's history,

"Being dead yet speaketh,"

and is, through its modern disciples, entitled to the honour of inaugurating that nobler freedom which, having thrown off its pagan impurities, and being revived by its contact with Christianity, burst into a purer flame than that which erst glimmered over the Roman freedman, but now sheds its clear and steady light from a shrine at which the professors of another system have lit their lamps without acknowledgment.

The law of Scotland, as we have seen, held parties entering upon work as colliers *ipso facto* astricted, or chained, as we may call it, to the work without any special contract; but Blackstone can hardly have meant by the vague doctrine which he enunciated, that this was at any time the law of England.

Upon this point Mr. Lee, the editor of the first volume of the eighteenth edition of the Commentaries, has the following note:—"A contract to serve for life might doubtless be enforced, but a court of equity might scrutinize the consideration. Formerly men gambled the futurity of their services for life, and modern times have presented us with a strange instance of gambling for life itself. The newspapers of the day mention the fact. Two Irishmen tossed up which should hang the other, and Limbrick, the police-officer, rescued the loser from a lamp-post on the Hampstead road. This last conventional understanding between the parties no *British* court could confirm, since all men *here* are the king's subjects, whatever else many of them are in his Majesty's colonies" (z). The learned gravity with which the worthy editor treats this ridiculous circumstance has something positively refresh-

ciples of justice with the other eternal principle of *pounds, shillings, and pence*; and applying the product to all civil injuries, from an injury to a man's honour to an injury to a man's nose! 'You have ruined my daughter'—

pounds, shillings, and pence! 'You have knocked me down with a blow in my face'—pounds, shillings, and pence! Where was the material prosperity of such a country as *that* to stop?"

(z) Black. Comm., vol. i. p. 425. *Note.*

ing in it in these days of jokes and quips, when the weightiest matters of the law are treated with a *gaieté de cœur* which nothing can apparently repress. It is significant of the change of men and manners since the period in question that the latest editor of Blackstone, Mr. R. Malcolm Kerr (*a*), omits the passage as to perpetual service altogether, without note or comment of any kind to indicate that it had ever really represented a principle of the law of England. So true is it that the wisdom of one age is the folly of the next, and that opinions and ideas which were once looked upon as fixed and settled, become in process of time "unto the Jews a stumbling block and to the Greeks foolishness."

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(*a*) Robert Malcolm Kerr, barrister at law, LL.D. of the University of Glasgow, judge of the Sheriff's Court of London, is the son of Mr. John Kerr, a procurator of high standing in Glasgow. Mr. R. M. Kerr passed at the Scottish Bar in 1843, and was called to the English Bar in 1848. Besides ably and carefully editing the latest edition of Blackstone's Commentaries, he has written an abridgment

of that work for Murray's "Students'" series, a difficult undertaking well executed. He has also written a treatise on the English County Courts, and other law works. It is a hopeful sign of the times to find a Scotsman editing Blackstone, and an ex-lord chancellor of England (Westbury) putting himself at the head of the General Council of the Procurators of Scotland to reform the procedure of her courts of law.

CHAPTER II.

I.—CIVIL LEGISLATION, AS AFFECTING WORKMEN, SERVANTS, AND APPRENTICES, PRIOR TO 1824—(CONTINUED).

I. CIVIL AS
AFFECTING
WORKMEN,
&c.

20 Geo. II. c.
19.

Complaints
and differen-
ces between
masters and
servants,
artificers,
&c.

IT will be readily imagined that so long as the relations between employer and employed remained as they were previous to the abolition in 1847 of the exclusive privileges of corporations and guilds, industrial legislation could not be of a very liberal or comprehensive character. So far back, indeed, as the year 1747, exactly a century before then, it had been felt that our legal enactments were not suited to the condition of the working classes; and an attempt was then made to remedy their defects by the passing of the Act 20 Geo. II. c. 19 (a), which proceeds upon the preamble that, "Whereas the laws now in being for the better regulation of servants, and for the payment of wages to them and to artificers, handicraftsmen, and labourers are insufficient and defective." For remedy whereof it is enacted that from and after the 25th March, 1747, "all complaints, differences, and disputes which shall happen or arise between masters or mistresses and servants in husbandry who shall be hired for one year or longer, or which shall happen or arise between masters and mistresses and artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers, employed for any certain time, or in any other manner, shall be heard and determined by one or more justice or justices of the county, riding, city, liberty, town corporate, or place where such master or mistress shall inhabit, although no rate or assessment of wages has been made that year by the justices of the peace of the shire, riding, or liberty, or by the mayor, bailiffs, or other head officer where such complaints shall be made, or where such differences or disputes shall arise: which said justice or justices is and are hereby empowered to examine upon oath any such servant,

(a) 20 Geo. II. c. 19. This Act is now superseded by 30 & 31 Vict. c. 141; but it must be remembered that the

latter Act is only to endure for a year from 20th August, 1867.

artificer, &c., or other labourer, or any other witness or witnesses, touching any such complaint, difference, or dispute, and to make such order for payment of so much wages to such servant, artificer, &c., or other labourer, as to such justice or justices shall seem just and reasonable, provided that the sum in question do not exceed £10 with regard to any servant, nor £5 with regard to any artificer, &c.; and in case of refusal or non-payment of any sums so ordered by the space of one-and-twenty days next after such determination, such justice and justices shall and may issue forth his and their warrant to levy the same by distress and sale of the goods and chattels of such master or mistress or person employing such artificer, &c., or other labourer, rendering the overplus to the owner or owners after payment of the charges of such distress and sale" (b). This Act was extended to tinnern and others by 27 Geo. II. c. 6, s. 2, and to servants in husbandry, though bound for less than a year, by 31 Geo. II. c. 11, s. 3 (c).

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20 Geo. II. c. 19.

Justices could make orders to extent of £10 with regard to claims of servants, and £5 with regard to claims of artificers &c.

27 Geo. II. c. 6.

31 Geo. II. c. 11.

The second section of the 20 Geo. II. c. 19, applies to cases of misconduct or ill behaviour on the part of the servant. It is in the following terms:—"Be it further enacted by the authority aforesaid, that it shall and may be lawful to and for such justice or justices, upon application or complaint made upon oath by any master, mistress, or employer (d) against any such servant, artificer, &c., or labourer, touching or concerning any misdemeanor, miscarriage, or ill behaviour in such his or her service or employment (which oath such justice or justices is and are hereby empowered to administer), to hear, examine, and determine the same, and to punish the offender by commitment to the house of correction, there to remain and be corrected (e), and held to hard labour for a reasonable time, not exceeding one calendar month, or other-

Servants could be imprisoned with hard labour, or be punished by abatement of wages.

(b) In *Wiles v. Cooper*, 3 A. and E. 524, it was held that justices had no power under this section, and 4 Geo. IV. c. 34, and 5 Geo. IV. c. 18, s. 2, to commit the master in default of distress. But that power is expressly given by 11 & 12 Vict. c. 43, s. 22, under which he may be committed to gaol for any term not exceeding three calendar months. That Act, however (*Jervis*), applies only to England; but see 30 & 31 Vict. c. 141, s. 11, by which imprisonment for any period not exceeding three months can now follow when the master or servant fails to pay in terms of justice's order.

There is no appeal to Quarter Sessions against an order for payment of weekly wages under 20 Geo. II. c. 19, and 4 Geo. IV. c. 34, s. 5. *R. v. Bedwell*, 4 E. and B. 213; S. C. 24; L. J. M. C. 17.

(c) These Acts are likewise superseded by above statute of 30 & 31 Vict. c. 141, and indeed they were all virtually so by the 4 Geo. IV. c. 34.

(d) "Or by his, her, or their steward, manager, or agent," 6 Geo. III. c. 25, s. 4, and 4 Geo. IV. c. 34, s. 3; "or by his counsel or attorney, or other person authorized in that behalf," 11 & 12 Vict. c. 43, s. 10.

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&c.

20 Geo. II.
c. 19.

Complaints
by servants,
&c., against
masters.

If proved,
servant to be
discharged
and freed
from employ-
ment.

wise by abating some part of his or her wages, or by discharging such servant, artificer, &c., or labourer, from his, her, or their service or employment; and in like manner, also, it shall and may be lawful to and for such justice or justices, upon any complaint or application upon oath by any such servant, artificer, &c., or other labourer, against such master, mistress, or employer, touching or concerning any misusage, refusal of necessary provision, cruelty, or other ill treatment of, to, or towards such servant, artificer, &c., or other labourer, to summon such master, mistress, or employer to appear before such justice or justices at a reasonable time to be prefixed in such summons; and such justice or justices shall and may examine into the matter of such complaint whether such master, mistress, or employer shall appear or not, proof being made upon oath of his or her being duly summoned, and upon proof thereof made upon oath to his or their satisfaction, to discharge such servant, artificer, &c., or other labourer of and from his said service and employment, which discharge shall be given under the hand and seal or hands and seals of such justice or justices gratis" (f).

(e) Corrected means "whipped," and this is a necessary part of the judgment under this act. *R. v. Hoseason*, 14 East, 607. See *Kirby v. Simpson*, 10 Exch. 358; see, however, 4 Geo. IV. c. 34, s. 3; and *Wood v. Fenwick*, 10 M. & W. 195; also case of *Ferguson* (Scottish), 30th June, 1864, *Irv.* 196, where, in a prosecution under the latter statute, a conviction was set aside on the appeal of the servant on the objection that the justice omitted to give him hard labour in addition to imprisonment!

Commitment does not prevent the servant acquiring a settlement when he returns to his master at end of sentence. *R. v. Barton*, 2 M. & S. 329; *R. v. Halcar*, 2 B. & C. 739. See as to how far a commitment under 4 Geo. IV.

c. 34, would operate to dissolve contract of hiring, *ex parte Baker*, 26 L. J. M. C. 193; S. C. 7; E. & B. 697; S. C. in Exch. 26; L. J. M. C. 155; S. C. 2; H. & N. 219.

(f) A magistrate acting maliciously under this section is nevertheless entitled to notice of action under 11 & 12 Vict. c. 44, s. 9; *Kirby v. Simpson*, 10 Exch. 358. See observations of Lord Ellenborough against a master acting as a magistrate on a complaint made by his own bailiff against another servant. *R. v. Hoseason*, 14 East, 607.

What would Lord Ellenborough have said had the case come before him which happened recently in the vicinity of Glasgow, referred to at pp. 39, 40, and 41.

[Note.—Since the previous sheets were sent to press it has come to our knowledge that a representation was made to the lord advocate. Mr. Gordon, with a promptness characteristic of himself and worthy of his office, immediately caused the other prisoner to be liberated! What can be thought of officials whose conduct has met with such significant reprobation? To use the words of Lord Mansfield when fining a justice £200 for an act of illegality of a more venial character even than that in question, and whose name was struck out of the Commission of the Peace—"It makes one bleed that the administration of justice should be in such hands."]

The third and fourth sections apply to apprentices. The former, which deals with the complaints of the apprentice against the master or mistress, is in the following terms:—"And be it further enacted by the authority aforesaid, that it shall and may be lawful to and for any two or more such justices, upon any complaint or application by any apprentice put out by the parish or any other apprentice, upon whose binding out no larger a sum than *five* pounds (*g*) of lawful British money was paid, touching or concerning any misusage, refusal of necessary provision, cruelty, or other ill treatment of or towards such apprentice by his or her master or mistress, to summon such master or mistress to appear before such justices at a reasonable time to be named in such summons; and such justices shall and may examine into the matter of such complaint, and upon proof thereof made upon oath to their satisfaction (whether the master or mistress be present or not, if service of the summons be also upon oath proved), the said justices may discharge such apprentice by warrant or certificate under their hands and seals, for which warrant or certificate no fees shall be paid."

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20 Geo. II. c. 19.

Complaints by apprentices against masters

On proof of complaint apprentices might be discharged.

There is no provision for any fine, penalty, or punishment of any kind being imposed upon the master or mistress guilty of the cruelty or ill treatment here referred to.

No fine or penalty upon master on proof of offence.

The fourth section deals with the complaints of the master or mistress as follows:—"And be it further enacted by the authority aforesaid, that it shall and may be lawful to and for such justices, upon application or complaint made upon oath by any master or mistress against any such apprentice, touching or concerning any misdemeanor, miscarriage, or ill behaviour in such his or her service (which oath such justices are hereby empowered to administer), to hear, examine, and determine the same, and to punish the offender by commitment to the house of correction, there to remain and be corrected, and held to hard labour for a reasonable time not exceeding one calendar month, or otherwise by discharging such apprentice in manner and form before mentioned" (*h*).

Complaints by masters against apprentices for misconduct.

Punishment by commitment to house of correction to be corrected, with hard labour.

(*g*) The statute 33 Geo. III. s. 25, extended this sum to £10; and by 4 Geo. IV. c. 29, it is extended to £25, or if nothing has been paid, 5 & 6 Vict. c. 7.

(*h*) By 32 Geo. III. c. 57, s. 13, the justices may also order the apprentice to be punished "by commitment to the house of correction, there to remain and be corrected (*i.e.*, whipped), and kept

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20 Geo. II
c. 19.
Appeal to
Quarter Ses-
sions.

No writ of
certiorari to
issue.

6 Geo. III.
c. 25.

Apprentices
absenting
themselves
compelled to
make up ab-
sent time.

In case ap-
prentice re-
fused to
make up
absent time,
could be
committed
to house of
correction.

The fifth section provides an appeal to the general Quarter Sessions (save and except any order of commitment), and declares that the costs to either party shall not exceed forty shillings.

By the sixth section it is provided that no writ of *certiorari*, or other process, shall issue or be issuable to remove any proceedings whatever, had in pursuance of the Act, to any of the courts of record at Westminster (i).

The 6 Geo. III. c. 25 (j), after reciting that persons employed in several manufactories of the kingdom frequently take apprentices who are very young, and for several years of their apprenticeship are rather a burden than otherwise to their masters; and that it frequently happens that such apprentices, when they might be expected to be useful to their masters, absent themselves from their service, and that the laws in being are not sufficient to prevent these inconveniences, for remedy thereof it is enacted, section first, "That after 24th June, 1766, if any apprentice shall absent himself from his master's service before the term of his apprenticeship shall be expired, every such apprentice shall, at any time or times thereafter whenever he shall be found, be compelled to serve his said master for so long a time as he shall have so absented himself from such service, unless he shall make satisfaction to his master for the loss he shall have sustained by his absence from his service; and so from time to time, as often as any such apprentice shall, without leave of his master, absent himself from his service before the term of his contract shall be fulfilled; and in case any such apprentice shall refuse to serve as hereby required, or to make such satisfaction to his master, such master may complain upon oath to any justice of the peace of the county or place where he shall reside, which oath

to hard labour for a reasonable time not exceeding three calendar months." There is an appeal by that Act to the Quarter Sessions.

(i) This section does not apply to proceedings under 4 Geo. IV. c. 34, *R. v. Terrett*, 2 T. R. 735. In *ex parte* Lord, 4 D. & L. 405, a *certiorari* was issued to bring up a conviction under the latter statute. As a general rule in England and Scotland, the supreme courts of both countries will grant a *certiorari*, or pass a bill of suspension, as the case may be, and quash

an order or conviction, &c., made by a justice in a case where he has no jurisdiction, or where he exceeds his jurisdiction, although review may be expressly taken away by statute. See *R. v. The Justices of Somersetshire*, 5 B. and C. 816, and other cases at end of this chapter. Section 7, excluding the Stanneries from the operation of this Act, was repealed by 27 Geo. II. c. 6.

(j) 6 Geo. III. c. 25. This Act is now superseded by the Act 30 & 31 Vict. c. 141.

such justice is hereby empowered to administer, and to issue a warrant under his hand and seal for apprehending any such apprentice; and such justice, upon hearing the complaint, may determine what satisfaction shall be made to such master by such apprentice; and in case such apprentice shall not give security to make such satisfaction according to such determination, it shall and may be lawful for such justice to commit every such apprentice to the house of correction for any time not exceeding three months."

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6 Geo. III. c. 25.

By section second it is provided that nothing in the Act contained shall extend to any apprentice whose master shall have received with him the sum of ten pounds.

Not to extend to apprentices upon whose binding out £10 had been paid.

The third section provides that no apprentice shall be compelled to serve for any time or term, nor to make any satisfaction to any master, after the expiration of seven years from the end of the term for which he had contracted to serve.

The fourth section, after reciting that it frequently happened that artificers, calico printers, glassmen, potters, labourers, and others (k), who contracted with persons for certain terms, left their respective services before the terms of their contracts were fulfilled, to the great disappointment and loss of the persons with whom they so contracted, for remedying whereof it is enacted, "that after the 24th of June, 1766, if any artificer, &c., labourer, or other person, shall contract with any person whomsoever for any time or term whatsoever, and shall absent himself from his service before the term of his contract shall be completed, or be guilty of any other misdemeanor, that then, and in every such case, it shall and may be lawful for any justice of the peace of the county or place where any such artificer, &c., labourer, or other person shall be found, and such justice is hereby authorized and empowered, upon complaint thereof made upon oath to him by the person with whom such artificer, &c., labourer, or other person shall have so contracted, or by his or her steward or agent (l), which oath such justice is hereby empowered to administer, to issue his warrant for the apprehending every such artificer, &c., labourer, or other person, and to examine into the nature of the complaint;

Provisions as to artificers, calico-printers, and others, absents themselves from service or being guilty of misdemeanor.

(k) This Act does not extend to domestic servants (*Kitchen v. Thorn*, 6 A. and E. 729), but only to parties *ejusdem generis*.

(l) "Or by his, her, or their steward,

manager, or agent," 6 Geo. III. c. 23, s. 4, and 4 Geo. IV. c. 34, s. 3; "or by his counsel or attorney, or other person authorized in that behalf," 11 & 12 Vict. c. 43, s. 10.

I. CIVIL AS AFFECTING WORKMEN, &c. If offence proved, might be committed to prison for any period of time not exceeding three months.

and if it shall appear to such justice that any such artificer, &c., labourer, or other person, shall not have fulfilled such contract, or have been guilty of any misdemeanor, it shall and may be lawful for such justice to commit every such person to the house of correction for the county or place where such justice shall reside, for any time not exceeding three months nor less than one month."

6 Geo. III. c. 25. The fifth section gives an appeal to Quarter Sessions (except an order of commitment) (m) on six days' notice of the intention to appeal being given to the justice and the parties concerned, and on the appellant entering into recognizance within three days after such notice.

The sixth section provides that nothing in the Act shall extend to the Stanneries or the city of London.

This Act did not supersede in any way the previous Act of 20 Geo. II. c. 19. The penalty of imprisonment in the former does not exceed one calendar month with hard labour. In the latter it is increased to three months, but there is no hard labour. It was competent to proceed under either of these Acts.

32 Geo. III. c. 57. The subsequent Acts, 32 Geo. III. c. 57, and 33 Geo. III. c. 55. 55 (n), also affected apprentices. By section thirteen of the former statute the justices might have ordered the apprentice to

Apprentices could be committed to house of correction and whipped.

be punished "by commitment to the house of correction, there to remain to be corrected (whipped), and kept to hard labour for a reasonable time, not exceeding three calendar months." There is an appeal by this Act to Quarter Sessions.

4 Geo. IV. c. 29.

Upon 23d May, 1823, an Act was passed intituled "An Act to increase the power of magistrates in cases of apprenticeship"

Extends provisions of 20 Geo. II. c. 19 to apprentices upon whose binding out £25 has been paid.

(o). This Act, after reciting the sections of the 20 Geo. II. c. 19 applicable to apprentices, provides that the whole of the provisions of that Act shall extend to apprentices upon whose binding out no larger a sum than £25 has been paid; and it also provides that in the case of the apprentices being discharged, that

(m) See *R. v. Justices of Staffordshire*, 12 East, 572, in which it was held that no appeal lies to the Sessions against a conviction and commitment in execution for three months of a collier under this statute, for absenting himself from his master's service, on the order of commitment contained in the

conviction. See also *Lindsey v. Leigh*, 11 Q. B. 455. But see 11 & 12 Vict. c. 43, s. 14, from which it would appear that conviction is no longer to form part of commitment. See *Archbold Jervis Act*, 3rd. ed. p. 136.

(n) 32 Geo. III. c. 57; 33 Geo. III. c. 55.

(o) 4 Geo. IV. c. 29.

the whole or any part of the premium which may have been paid by the apprentice, may be refunded by the master or mistress, in virtue of an order made upon them by the justice.

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The preceding statutes (which do (*p*) not appear to have been acted upon in Scotland) regulated the relations between masters, servants, and apprentices until the passing of the 4 Geo. IV. c. 34 (*q*). This Act, after reciting the 20 Geo. II. c. 19, the 6 Geo. III. c. 25, and the 4 Geo. IV. c. 29, and that it is expedient to extend the powers of these statutes, enacts, by section first, that it shall be lawful, not only for any master or mistress, but also for his or her steward, manager, or agent, to make complaint upon oath against any apprentice, within the meaning of the said before recited Acts, to any justice of the county or place where such apprentice shall be employed, of or for any misdemeanor, misconduct, or ill behaviour (*r*), of any such apprentice; or if such apprentice shall have absconded, it shall be lawful for any justice of the peace of any place where such apprentice shall be found, or where such apprentice shall have been employed, to issue his warrant for apprehending every such apprentice. And it is provided that it shall be lawful for the justice to hear and determine the complaint, and to punish the offender by abating any part of his or her wages, or otherwise by commitment to the house of correction, there to remain and be held to hard labour for a reasonable time, not exceeding three months.

Previous statutes not acted upon in Scotland.

4 Geo. IV. c. 34.

Provisions with regard to apprentices.

It will be kept in view that the case of an apprentice is somewhat different from that of servants. Mr. Barclay says ("Digest," p. 640) that it does not appear that a warrant can be issued in the first instance for his apprehension except in the case of his *absconding*; and that it does not seem that any abatement of his wages during the term of imprisonment can be made, as in the case of servants; but see case of Macnab, No. 47, p. 92.

By the second section all disputes and differences between masters and apprentices, within the meaning of the previous Acts, regarding wages, can be heard and determined by the

Disputes between masters and apprentices.

(*p*) *Vide* Note. Introduction, p. 1.

(*q*) 4 Geo. IV. c. 34. By 10 Geo. IV. c. 52, the provisions of the 4 Geo. IV. c. 34 are extended to all the parties mentioned in 17 Geo. III. c. 56 (Embezzlement Act). *Vide* also 6 & 7 Vict. c. 40, as to hosiery manufacturers.

The 4 Geo. IV. c. 29, 4 Geo. IV. c. 34, 10 Geo. IV. c. 52, and 5 & 6 Vict. c. 7, are now superseded by 30 & 31 Vict. c. 141.

(*r*) When a felony has been committed the offender would be entitled to be tried by a jury. *In re Jacklin*, 2 D. and L. 103.

1. CIVIL AS JUSTICES, one or more, provided the sum in question does not
AFFECTING exceed £10, and failing payment by the master the sum awarded
WORKMEN, can be recovered by distress and sale of his goods and chattels.
&c.
4 Geo. IV.
c. 84.

Contracts
entered into
or upon
by servants
in husban-
dry, handi-
craftsmen,
and others.

The third section applies to servants. It enacts "that if any servant in husbandry, artificer, calico printer (s), handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall contract with any person or persons whomsoever to serve him, her, or them for any time or times whatsoever, or in any other manner, and shall not enter into or commence his or her service, according to his or her contract (such contract being in writing, and signed by the contracting parties), or having entered into such service shall absent himself or herself from his or her service (t) before the term of his or her contract (whether such contract shall be in writing or not in writing) shall be completed, or neglect to fulfil the same, or be guilty of any other misconduct or misdemeanor in the execution thereof, or *otherwise respecting the same*, then, and in every such case, it shall and may be lawful for any justice of the peace of the county or place where such servant in husbandry, &c., labourer, or other person shall have so contracted, or be employed, or be found, and such justice is hereby authorized and empowered upon complaint thereof made upon oath to him by the person or persons, or any of them, with whom such servant in husbandry, &c., labourer, or other person shall have so contracted, or by his, her, or their steward, manager, or agent, which oath such justice is hereby empowered to administer, to issue his warrant for the apprehending every such servant in husbandry, &c., labourer, or other person, and to examine into the nature of the complaint; and if it shall appear to such justice that any such servant in husbandry, &c., labourer, or other person, shall not have fulfilled such contract, or hath been guilty of any other misconduct or misdemeanor, as aforesaid, it shall and may be lawful for such justice to commit every such person to the house of correction, there to remain and be held to hard labour for a reasonable time, not exceeding three months, and to abate a proportionable part of his or her wages for and during such period as he or she shall be so confined in the house of correction, or in lieu thereof to punish the offender by abating the whole or any

Complaints
by masters
against such
servants,
handicrafts-
men, and
others, and
warrants for
their appre-
hension.

Punishment
of offenders.

(s) A "designer" is within the Act. *Ex parte* Ormrod, 1 D. and L. 825.

(t) This does not apply to parties who enlist in her Majesty's forces. *Vide* annual Mutiny Act.

part of his or her wages, or to discharge such servant in husbandry, &c., labourer, or other person, from his or her contract, service, or employment, which discharge shall be given under the hand and seal of such justice gratis" (u).

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4 Geo. IV. c. 34.

The fourth section gives power to servants in husbandry, artificers, and apprentices, to summon the steward, agent, bailiff, foreman, or manager of any employer who is non-resident, for their wages, and to the justices to make the same orders in such cases as they could have made if the employer himself were the party summoned, provided the sum in question does not exceed £10; and in case of refusal or non-payment for the space of twenty-one days after the date of any order for payment, a warrant may be issued for levying the same by distress and sale of the employer's goods and chattels.

Complaints by servants against employers for wages not exceeding £10, how disposed of.

The fifth section empowers the justices, in complaints brought before them under the 20 Geo. II. c. 19, and 31 Geo. II. s. 11 (v), to order the amount which may appear to be due to any servant in husbandry, artificers, labourers, or other persons named in the said Acts, to be paid to the person entitled thereto, within such period as the justices should think proper; and in case of refusal or non-payment, the same is to be recovered by distress as aforesaid, and the orders of such justices in regard thereto are final and conclusive.

Complaints for wages under 20 Geo. II. c. 19, and 31 Geo. II. s. 11.

The sixth section provides that nothing in the Act shall affect the jurisdiction of the chamberlain of the city of London, or of any other court within the city, touching apprentices.

Under this Act it has been held that a servant who has a lawful excuse for absenting himself cannot be convicted under the third section: *Rider v. Wood* (w). In this case it was held by the Court of Queen's Bench "that if the magistrate thought that he left in the *bona fide* belief that he had properly put an end

Rider v. Wood.

(u) As to whether this section repeals 6 Geo. III. c. 25, see *ex parte Baker*, 7 E. and B. 697; S. C. 26; L. J. M. C. 193; S. C. in Exch. 26; L. J. M. C. 155; 2 H. and N. 219.

(v) 20 Geo. II. c. 19; 31 Geo. II. c. 11. This Act is intitled "An Act to amend an Act made in the third year of King William and Queen Mary, intituled 'An Act for the better explanation and supplying the defects of the former laws for the settlement of

the poor,' so far as the same relates to apprentices giving a settlement by indenture; and also to empower justices of the peace to determine differences between masters and mistresses and their servants in husbandry, touching their wages, though such servants are hired for less than a year."

(w) 1 Law Times, N. S. 30; S. C. 29; L. J. M. C. 1. See also *Ashmore v. Horton*, 1 L. T. N. S. 58; S. C. 29; L. J. M. C. 13.

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AFFECTING
WORKMEN,
&c.

4 Geo. IV.
c. 34.

Ex parte
Baker.

to the service, he could not be convicted under the statute 4 Geo. IV. c. 34, s. 3, for absenting himself from his service, whether the notice was good or bad: *actus non facit reum, nisi mens sit rea* ("it is the intention, and not the act, that makes the crime").

The contract of service must also be a binding contract on both parties (x).

It was held in the case of Baker, that a commitment under this Act did not, *per se*, operate as a dissolution of the engagement, and that the servant was bound to return to his service and his master was bound to receive him, and that the servant could be punished for a second offence, and for any subsequent failure (y).

Persons aiding offenders under this Act can be prosecuted under 11 & 12 Vict. c. 43, s. 6, and it does not appear to be a defence that the party charged did not know that servant had no lawful excuse (z).

The following points have been decided in England:—

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Geo. IV.
c. 34.

1. It was held that a contract to *serve* must be shown to exist, as well under 20 Geo. II. c. 19, and 31 Geo. II. c. 11, as under the 4 Geo. IV. c. 34, and that this should appear in the information and other proceedings. *Wiles v. Cooper*, 5 M. and M. 276.

2. A party of the name of Sopp, a labourer, had been employed by Lowther to dig and stean a well, for which he was to receive 2s. a foot. The magistrates having granted a warrant of distress for wages in respect of this work against Lowther, under which his goods were seized, an action of trespass was brought against them, it being contended that they had no jurisdiction. The court held the order for wages to be good; and in reply to the argument that Sopp did not come within the 20 Geo. II. c. 19, because he was not a servant in husbandry, nor a servant or labourer in any of the trades, callings, or employments enumerated in the Act, and that the Act did not extend to labourers generally, Lord Ellenborough observed that unless the words, "other labourers employed for any certain time or in any other manner," meant to comprehend a different description of persons from those before particularly mentioned, it was difficult to account for their insertion at all; but applying them to other labourers in any other *trade* or business, the sense would be perfect, and each word would have its meaning. *Lowther v. Earl of Radnor*, 8 East. 113.

3. A party was engaged as a house servant, and having absented herself from her service was committed to the house of correction under the former Act, 6 Geo. III. c. 25. An action for false imprisonment having been brought against the committing magistrate, the court held that a domestic servant was not within the statutes relating to servants; and that the words "other persons" are not all persons whatever who enter into engagements to serve for stated periods,

(x) *R. v. Lord*, 12 Q. B. 757.

by 30 & 31 Vict. c. 141, s. 12, and

(y) *L. J. 2*; *B. 193*; *S. C. 7*; *E. and*

by the general scope of the Act.

B. 697. But see how this is affected

(z) *Ex parte Smith*, 27 L. J. M. C. 186; *S. C. 3*; *H. and N. 227*.

but persons of *the same description* as those before enumerated; and that the generality of the words must have been so restrained, had not domestic servants been expressly excepted from 5 Eliz., in conformity with the ordinary rule for construing Acts of Parliament, as laid down by Lord Tenterden, in *Sandman v. Breach*, 7 B. and C. 100, that where general words follow particular ones, the rule is to construe them as applicable to persons *ejusdem generis*. *Kitchen v. Shaw*, 6 A. and E. 729, and 1. J. P. 185.

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4. A woman servant was bound for a year as a dairymaid, and also as a general domestic servant. It was proved that she discharged the ordinary duties of a domestic servant and attended on labourers, but she was also engaged to make cheese and butter, and to harvest corn and hay if required. Held that there was evidence to conclude that she was a servant in husbandry, and that the domestic duties were only auxiliary to her service in husbandry. Per Chief Justice Campbell—"If this servant had been engaged in reaping corn, it seems to me that the domestic duties mentioned would be auxiliary to her services in husbandry." 11th May, 1854, *ex parte Hughes*, Q. B. (W. R.).

5. A. contracted with B. to build a wall for a certain price within a stated time, according to a written specification, and having performed part of the work refused to complete it. The court held that the relationship of master and servant was not established, and that the magistrates had no jurisdiction under 4 Geo. IV. c. 34. *Lancaster v. Greaves*, 9 B. and C. 628.

6. A. contracted with B. to weave for him pieces of silk at stated prices. The court held that A. was not a servant under 4 Geo. IV.: and Justice Bayley in delivering judgment said, "To be within the Act the party must not only be included within the enumeration of persons to be affected by it, but must also have *contracted to serve*. Now there is a very plain distinction between becoming the servant of an *individual*, and contracting to do *certain specific work*. The same person may contract to do work for many others, and cannot with propriety be said to serve each of them." *Hardy v. Ryle*, J. B. and C. 603.

7. A contract to serve as a collier for one month, and so on from month to month, determinable on a month's notice on either side, at certain wages for each ton for cutting coal, held a contract of *personal service* under the Act 4 Geo. IV. c. 34; and when the commitment shows there was a conviction it is not necessary to have a separate written conviction. 1st May, 1854, *Reg. v. Bailey* (Q. B.), W. R.

8. An agreement to serve, and by the master to pay such wages as the articles made by the servant should amount to at the master's usual workman's prices, was held to contain by implication an obligation on the master to find employment, and was a valid contract upon which the justices were bound to adjudicate under the Act 4 Geo. IV. c. 34. 25th May, 1853, *Reg. v. Justices of Birmingham*, (Q. B.); 21 L. J. 127 (W. R.).

9. A., being a journeyman calico printer, contracted with B. to print pieces of woollen cotton goods, and, having left his work unfinished, was committed to the house of correction under 4 Geo. IV. A. was employed on the *premises* of his employer, who supplied his men with blocks and materials necessary for performing the work, but paid according to the quantity of the work done, and not by the day or week. A. having been brought before Justice Williams under a writ of *habeas corpus*, his lordship discharged him on the ground that the rela-

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tionship of master and servant did not exist, and that the contract was nothing more nor less than a contract to perform a particular work, wholly distinct from entering into a service in the familiar sense of that term: and that the contract might have been performed, and yet the defendant might notwithstanding have entered into divers other contracts and been working for divers other persons at the same time. *Reg. v. Johnson*, 9 Law Journal (N. S.), M. C. 27, and 4 J.P. 265.

10. Ormrod was committed under 4 Geo. IV. c. 34, s. 3, for having been guilty of misconduct in his service as a designer, by unlawfully copying and embezzling certain patterns used in calico printing, his master's property. On motion for *habeas corpus*, it was held that a pattern designer was within the statute, the term "artificer" not being confined to employment in which great manual labour is required; and that the occupation of the defendant was not so different from that of the persons specified in the statute as to exclude him from falling within its provisions. *Ex parte Eli Ormrod*, 13 L. J. (N. S.) M. C. 73.

11. A warrant of commitment was held sufficient which stated that O. P. had contracted in writing to serve two persons in their business of potters for a certain time, and had absented himself without leave of his *said master* (in the singular), and not stating that at the hearing of the complaint the evidence of O. P. himself had been heard. 25th May, 1845, *in re Price* (Q. B.), Weekly Reporter.

12. A., a miner, was committed under 4 Geo. IV. c. 34, s. 3, for absenting himself before the term of his contract was completed, and the commitment ordered him to be *corrected* and held to hard labour. It was held that the commitment was bad, inasmuch as it exceeded the authority of the justices, they having no power under the statute to order *corporal chastisement*. *Reid v. Fenwick*, 6 J. P. 491.

13. A conviction was set aside where the justice had not adjudicated as to abatement of wages during the period of imprisonment. Where the absenting in respect of which a second conviction took place was the not returning to the service after the first conviction, held that the justices have no jurisdiction under the Act, but that the contract was not dissolved by a first conviction, and that the conviction was not bad because not showing that the servant had not entered the service, or that evidence was taken not in his presence. *In re Baker*, 2 H. and N. Ex. Rep. 219.

14. The employer is the person on whose farm the servant works, and not his bailiff, though the contract may have been made with the latter. *R. v. Hoseason*, 14 East, 605.

15. The conviction and the commitment must show that the complaint was on oath, and the examination also. They must also set forth the nature of the employment. It was held not sufficient to say that the defendant was a minor, where it was not added that he had contracted to serve as such. *R. v. Lewis*, 13 Law Jour., N. & M. 646.

16. The commitment must state that the party was *convicted*, not that he was merely *charged on oath*. *R. v. Rhodes*, 4 T. R. 220.

17. Both conviction and commitment must show that the contract was entered into, or the work refused to be done, or the servant found within the jurisdiction of the magistrate. *Johnston v. Reid*, 6 Mee. & W. 124.

18. The jurisdiction is founded on a written contract, or where the servant has entered into the service with or without written contract. These facts must appear on the face of the conviction, which alone tests the regularity of the procedure; and if such is not stated the warrant is bad. *Lindsay*, 11 Q. B. 455; *in re Hammond*, 9 Q. B. 92; *R. v. Askew*, 20 L. J. 241. DECIDED
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19. Under the preceding Act, 6 Geo. III. c. 25, it was held that there was no appeal to the Quarter Sessions. Per Lord Ellenborough—"It is not for us to say whether it is convenient or proper to provide a remedy by appeal for a party aggrieved by commitment under this Act. We can only declare what the legislature have said in this case; and when, by excepting an order of commitment out of the appeal clause, they have said that there shall be no appeal against such an order, and when the commitment must for this purpose be taken to be one and the same thing with the conviction, we have no discretion left to exercise upon the subject, and it does not become us to scan the wisdom of the provisions which the legislature have enacted." *R. v. Justices of Staffordshire*, 12 East, 572.

20. A charge of theft was found not to fall within the statute. *Jacklin*, 2 D. & L. 103.

21. The commitment must show that the evidence was given in presence of the accused party. *Reg. v. Tordoft*, 5 Q. B. 933.

22. An amended commitment was received and sustained after the party convicted was in prison. *Reg. v. Richards*, 5 Q. B. 926.

23. A conviction was set aside where *absence* was set forth as the offence, but it was not said to have been *without leave or without lawful cause*. *Turner*, 2 New. S. C. 403; 9 Q. B. 80.

24. A conviction was held bad where it was not set forth that the contract was in writing, or that the servant had entered on his service; and the warrant of commitment being of the nature of an order, the conviction cannot be amended after the commitment has been drawn up. *Lindsay*, 3 N. S. C. 99; *in re Askew*, 20 Law Journal (N. S.), M. C. 241.

25. A document in the hands of the jailor held to have the double character of a conviction and commitment; and as it did not set forth the evidence nor in form *adjudge* the imprisonment, it was held bad in the character of a conviction. *Hammond's case*, 9 Q. B. 92.

26. It was held not necessary to set forth the evidence in a conviction and commitment which declared the information was true, and adjudged the term of imprisonment. 24th November, 1853, *Gessawood*, W. R. 948; *Turner*, 9 Q. B. 80.

27. A tailor was held to fall within the statute as an artificer and handicraftsman, and was bound to finish his work. The following lines were cited from *Richardson's Dictionary* in support of the decision:—

"These tailoring artists for our lays
Invent cramp rules, and for our stays,
Striving free nature's shape to hit,
Emaciate sense before they hit."

12th June, 1855, *ex parte Gordon*, W. R. An order under the Act 20 Geo. II. c. 19, and also under the fifth section of 4 Geo. IV. c. 34, upon a master to pay wages, was held not appealable. *R. v. Bedwell*, 4 El. & Bl. 213; 1 Jur. N. S. 306; 24 L. J. M. C. 17.

Note.—It seems to have been taken for granted, at the examination of wit-

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nesses by the select committee of the House of Commons in 1865, that this case was an authority for holding that there was no appeal under the 4 Geo. IV. c. 34. In the examination of Mr. John Strahan, solicitor in Glasgow, the following questions were put to that gentleman:—

"Mr. Cox.—Do you know whether, under any of these statutes, there is an appeal to the Quarter Sessions from an order made for payment of wages by any justice or justices?—It was doubted whether there was an appeal, but I think that there is an appeal now; in Scotland I know that there is no appeal.

"CHAIRMAN.—You have not stated positively that there is an appeal in England?—No; I say that in Scotland there is no appeal.

"Mr. Cox.—Have you had your attention called to the case of the Queen against Bedwell, reported in 4 Ellis & Blackburn, in which the question arose about the power of the master to appeal to the Quarter Sessions from an order of the justice or justices?—I did at one time read the case referred to."

Bedwell's case, however, was decided upon a specialty. It will be recollected that it is provided by the fifth section of the 4 Geo. IV. c. 34, that a justice before whom any complaint was made *under the 20 Geo. II. c. 19, or the 31 Geo. III. c. 11*, might order the amount of wages due to any servant in husbandry, artificers, &c., mentioned in either of these Acts, to be paid to the persons entitled thereto. It then goes on to say—"and every order or determination of *such justices* made under this Act shall be *final and conclusive*, anything in either of the *said Acts* contained to the contrary notwithstanding." The claim in Bedwell's case was founded upon the 20 Geo. II. c. 19, and was enforced by means of the above section of the 4 Geo. IV. c. 34. Plainly, therefore, it fell under the express exclusion of appeal. But there is no prohibition of appeal contained, nor any express form of appeal given by the 4 Geo. IV. c. 34, as to anything else in that Act. It is laid down in "Paley on Summary Convictions," p. 341, that "a right of appeal must be given by *express* enactment, and cannot be extended by an equitable construction to cases not distinctly enumerated;" and in *R. v. Hanson*, 4 B. & A. 519, Abbott, C. J., said—"Although a *certiorari* lies unless *expressly* taken away, yet an appeal does not lie unless expressly given by statute."

Mr. Strahan does not state why he thinks that there is an appeal in England, but not in Scotland. In the Scottish case of *Methven*, 20th December, 1848, 1 Shaw's Just. Rep. 146, the Quarter Sessions reviewed a decision of the justices under the 4 Geo. IV. c. 34. Their sentence was carried by *certiorari*, or suspension, to the Court of Session. No objection was taken there to the power of the Quarter Sessions to entertain the appeal, but the judgment was quashed on another ground. The point is said to be doubtful in Scotland; see principle adopted in case of *Mitchell v. Morrison*, 25th June, 1838 (House of Lords).

28. A warrant of commitment under the third section adjudged that J. G. having contracted to serve J. S. as a collier for a certain time, and the term of his contract being unexpired, "did unlawfully misdemean and misconduct himself in his said service by neglecting and absenting himself from his said service without the leave of his master, without having given to his said master any notice thereof, and without assigning any sufficient reason for so doing." Held bad, as it did not show that J. G. had absented himself without lawful excuse. Such an instrument need not set out the evidence, at all events since

11 & 12 Vict. c. 43, s. 17. *Re Gesswood (ante)*, 2 El. & Bl. 952; 23 L. J. M. C. 35; 17 Jur. 1163. Lord Campbell said—"Such a document is no doubt for some purposes equivalent to a conviction." Wightman, J., said—"Since the decision in *Lindsay v. Leigh* it can hardly be contended that this is a conviction for all purposes."

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29. See also *Re Bailey and Collier*, 3 El. & Bl. 607, where the warrant alleged that the plaintiff had been guilty of divers misdemeanors, particularly that he had absented himself from the service of his master before the term of his contract was completed. Held that no conviction was necessary; and that the warrant, whether it was an order (as Mr. Baron Parke thought it was) or in the nature of a conviction, was the only instrument contemplated by the legislature, and the legality of the imprisonment depended upon the sufficiency of that instrument alone; and that, whether the warrant was construed with less strictness as being in the nature of an order, or with greater strictness as being in the nature of a conviction, it was bad, as it did not bring the case within the statute, by averring either that the contract was in writing or that the service had been entered upon.

30. *Lindsay v. Leigh*, 11 Q. B. 455. Commitment stating that defendant did, before the contract of service was completed, "absent himself from his said service, and did thereby neglect to fulfil the same, contrary to the form of the statute," was held not to show any offence, as there might be some lawful excuse for his absence, though the statute simply makes the party absenting himself from service the ground of complaint. *Re Turner*, 9 Q. B. 80. See *Willet v. Booth*, 30 L. J. M. C. 6; *Yuile v. Mappin*, id. 234.

31. There should not only be absence without lawful excuse, but knowledge on the part of the defendant that there was no lawful excuse. *Rider v. Wood*, 29 id. 1, 2 El. & Bl. 338.

32. Where the defendant had agreed in writing to enter into service, but could not do so (on account of a previous contract with another) without exposing himself to penalties, it was held that he had a lawful excuse for not commencing service. *Ashmore v. Horton*, 2 El. & Bl. 360; 29 L. J. M. C. 13.

33. The rule formerly requiring that the evidence should appear to have been given in the presence of the party charged, applied also to those warrants of commitment which operate in themselves as convictions or orders; and the warrant alone being returned, and being defective in this respect, the court could not assume that there was a distinct conviction free from the objection. *R. v. Tordoft*, 5 Q. B. 933; *Re Gray*, 2 D. & L. 539; *R. v. Lewis*, 1 id. 822.

34. In another case it was held to have the double character of a conviction and commitment, and to be bad in the character of a conviction, as it did not adjudge any imprisonment (*Re Gesswood, ante*), but merely adjudged the complaint to be true, and then convicted the defendant, and commanded the keeper of the house of correction to receive him, to remain and be held to hard labour for a certain time. *Re Hammond*, 9 Q. B. 92.

35. In another case it was held to be a commitment in execution, and bad for want of venue in not showing that the contract had been entered into, or the work had been refused to be done, or the servant had been found within the jurisdiction of the magistrate. *Johnson v. Reid*, 6 M. & W. 124. It is

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doubtful whether since 11 & 12 Vict. c. 43, the conviction any longer forms part of the commitment. "Smith on Master and Servant," p. 331 n (e), 2nd edit.

36. The relation of master and servant is essential to give the magistrate jurisdiction. *Hardy v. Ryle*, 9 B. & C. 603; *Willett v. Booth*, 30 L. J. M. C. 6. See also *Re Bailey and Collier*, 3 El. & El. 607; 18 Jur. 930; 23 L. J. M. C. 161—in which the Court of Queen's Bench held that it might be shown by affidavit that there had not been any evidence before the magistrate of a contract to serve within the statute, so as to give them jurisdiction in the matter.

37. The contract must be to serve the complainant exclusively. *Lancaster v. Greaves*, 9 B. & C. 628; *ex parte Gordon*, 1 Jur. N. S. 683; 25 L. J. M. C. 12. It should be mutually binding, *R. v. Welch and another*, 2 El. & Bl. 357; 22 L. J. M. C. 145; *Re Lord*, 12 Q. B. 757; *Whittle v. Frankland*, 31 L. J. M. C. 81.

38. As to aiding and abetting the servant to absent himself, see *ex parte Smith*, 27 id. 186, substituting good for bad commitment, &c. The following cases are not within the statute:—Domestic servants (*Kitchen v. Shaw, ante*), felonious acts (*Jones v. Williams*, 3 B. & C. 762; *ex parte Jacklin*, 2 D. & L. 103; 13 L. J. M. C. 139), a person employed to keep possession under a *f. fa.* (*Bramwell v. Pennick*, 7 B. & C. 536), contract to weave silk gowns at certain prices (*Hardy v. Ryle*, 9 B. & C. 603), to complete a carriage road for a certain price within a certain time (*Lancaster v. Greaves*, 9 B. & C. 628), to print pieces of woollen goods (*ex parte Johnson, Dowl.* 702), to keep accounts at a farm, and to carry out the orders there given (*Davies v. Berwick*, 30 L. J. M. C. 84).

39. The following cases are within the statute:—A designer who invents and draws patterns for calico printing (*ex parte Ormrod, ante*; *Lilly v. Elwin*, 11 Q. B. 742; *R. v. Lewis*, 1 D. & L. 822; 13 L. J. M. C. 46); a stuff presser working manually for weekly wages and a commission, and superintending other workmen (*Whitely v. Armitage*, 13 W. R. 144); a person employed by a master tailor to make clothes as he should be required—when engaged on a job he was to work on the tailor's premises, and for him exclusively until job was finished (*ex parte Gordon, ante*); a skilled angle-iron smith engaged to serve his employer exclusively until vessel completed (*Laurence v. Todd, ante*); a butty collier, although he may employ men under him (*Bowers v. Loveken*, 6 E. & B. 584; 25 L. J. Q. B. 371; *Whitely v. Armitage*, 5 N. R. 120. See, however, *Sleeman v. Barrett*, 2 H. & C. 934; 33 L. J. Exch. 153). When a fresh absenter renders the servant liable to a second conviction, see *ex parte Baker*, 7 E. & B. 697; 26 L. J. M. C. 193 (in Exch. on a different point; 26 L. J. M. C. 155); and see *Yuile v. Mappin*, 30 L. J. M. C. 234; *Whittle v. Frankland*, 31 id. 84. Warrant stating that it appeared to the justices, as well upon examination on oath as "otherwise," that the defendant having contracted to serve, and the term of his contract being unexpired, did neglect and absent himself, &c., held sufficient. *Ex parte Baker, supra*. See in case of an infant workman, *Lord*, 12 Q. B. 757; *Wood v. Fenwick and others*, 10 M. & W. 195; *R. v. inhabitants of Chillesford*, 4 B. & C. 94; *Gray v. Cookson*, 16 East, 13.

40. A servant having been convicted for absentering himself without leave or

lawful excuse, and imprisoned, and still refusing to return, may be again convicted; and it is immaterial that he intended, in the first instance, to break the contract once for all, or *bona fide* believed that the first imprisonment put an end to the contract. *Unwin v. Clarke*, 1 L. R. Q. B. 417; 12 Jur. N. S. 429; 35 L. J. M. C. 193; 14 W. R. 688; 14 L. T. N. S. 356.

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The following points have been decided in Scotland :—

1. A weaver was held improperly convicted under 4 Geo. IV., who had engaged to work a woollen shawl web in the factory of his employer at so much per yard, as there was no *time* contract. Lord Cockburn said—"Suppose that I employ a painter to execute my portrait, and he tortures me by delaying to finish it, could he be punished as infringing the statute?" 17th February, 1844, *M'Vey*; 2 Broun, 102.

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2. A weaver, engaged for fifteen months, was found improperly convicted under the 17 Geo. III. c. 56, which applies to the working of materials, and not to a *time* service, which is ruled by the 4 Geo. IV. c. 34. 13th March, 1837, *Kennedy*; 1 Swin. 474.

3. A domestic servant of a farmer was found not subject to prosecution under 4 Geo. IV. 25th January, 1845, *Normant*; 2 Broun, 375.

4. A conviction against a sea apprentice was sustained, and an objection of vagueness was disregarded, and where the apprentice absconded and was again found after two months, it was found competent to repeat the conviction without a new complaint. 20th May, 1839, *Duthie*; 2 Swin. 385.

5. A conviction under the Act against a sea apprentice was set aside because it ought to have been under 5 & 6 Will. IV. c. 19 (the then Merchant Seamen's Act). 12th March, 1842, *Strachan*; 1 Broun, 63.

6. It was held not necessary that the justice who takes the oath and issues the warrant should examine into the complaint; that a justice of the county where the servant is at the time may entertain the complaint, though the contract and service were in another county; and that a kitchen woman and byre woman came within the Act as servants in husbandry. Per Lord Mackenzie—"It is not necessary to be *exclusively* an agricultural servant—a ploughman may be occasionally employed as a coachman, but does not thereby cease to be an agricultural servant." 9th March, 1846, *Clark*; *Arkley*, 33.

7. The justice who takes the evidence must give judgment. 1st June, 1842, *Russel*; *Arkley*, 211; 15th June, 1844, *Wilson*; 2 Broun, 235.

8. Held unanimously, 1st, that a workman in a glass manufactory could be prosecuted under the Act although the parties were at issue, and proof was allowed as to the practice of the trade in affording workmen competent assistance. 2nd, That it is not necessary that the final judgment should be given by the justice who issued the original warrant. 3rd, That written proof and pleadings are competent; and *lastly*, the court were equally divided on the question whether the servant should be present at giving judgment. Lords Gillies, Moncrieff, and Medwyn held such presence not necessary; Lords Justice-Clerk Boyle, Meadowbank, and Mackenzie held it to be necessary. But as the vote of the presiding judge did not count, the suspension was refused, the last point being held open. 21st November, 1836, *White*; 1 Swin. 344.

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9. A workman deserting in England may be apprehended in Scotland and carried back to England under a warrant of an English justice, indorsed by a justice in Scotland, but doubted if he could be conveyed by sea. 21st November, 1836, Watson; 1 Swin. 339.

10. Found to be incompetent, under this Act, to bring parties by sea from England; but expenses were refused. 28th November, 1836, Mathews; 1 Swin. 393. See also Watson; 1 Swin. 339: Crawford, 19th November, 1838; 2 Swin. 200: 9th March, 1846, Beattie; Arkley, 14. But it was found no objection when a party was apprehended in Ireland and transmitted to Stranraer, where he was taken before a justice, who granted a warrant to carry him before a justice in Lanarkshire, that he was taken to Glasgow by sea. 16th June, 1854, M'Kay; 1 Irv. 497.

11. It is not necessary to have the concurrence of the public prosecutor in prosecutions under this statute. A collier refused to put out more than eight loads, whilst thirteen was a fair and moderate day's work or darg. On a proof the justices convicted; and the court held the objection stated was one on the merits, which they could not inquire into. 1st June, 1844, Blackwood; 2 Broun, 206.

12. A complaint was brought in name of "The Coltness Iron Company," and Messrs. Houldsworth, individual partners thereof; but the oath was by the manager. A conviction following upon it was set aside (Lords Justice-Clerk and Meadowbank dissenting). Per Lord Mackenzie—"The party in whose name the complaint is presented must support it by his own oath." 10th December, 1842, M'Neill; 1 Broun, 454.

Note.—By the law of Scotland, a mere *descriptive*, as opposed to a proper firm, cannot pursue any action. They may, however, pursue a civil action with the addition of three or more of the nominal partners. A mercantile company cannot prosecute criminally in name of its firm.

13. In another case the following objections were repelled—1st, That the complaint was by a descriptive company; but it happened that the manager was also a party; 2nd, that the servant was on day's wages, and was thus not within the Act; and 3rd, that the proceedings were not conducted by the same justice throughout. "But in respect a question relative to the mode of paying the suspender's wages was objected to in the inferior court, and not allowed to be put," the court passed the bill of suspension with modified costs. 6th December 1841, Leadbetter; 2 Swin. 620.

14. It was not necessary that the complaint should be subscribed on every page, 6th December, 1841, Morrison; 2 Swin. 584; and a complaint subscribed by the complainer's law agent was held sufficient. 5th December, 1853, Robertson; 26 Jur. 147.

15. In the case of an apprentice charged with refusing to work, it was held—1st, That the statute was applicable to an apprentice under indenture; 2nd, that it was not an objection that the complaint was without a date, the oath and warrant being dated; 3rd, that there existed no review on the merits; 4th, that the place of the complainer's works being mentioned, a part of their designation was sufficient specification of the *locus delicti*; but, 5th, that the statute did not authorize a warrant to *convene* but to *apprehend*, and the former word being used,

the proceedings were null, as the party had not been legally brought into court. DECIDED POINTS IN SCOTLAND UNDER 4 GEO. IV. c. 34. Per Lord Justice-Clerk Boyle—"I am quite clear that even if the servant had gone *voluntarily* before the justices the legality of the after proceedings against him would have involved a question requiring some consideration." 19th November, 1838, Crauford; 2 Swin. 200.

16. A complaint against certain apprentices calico printers was laid on the *third* instead of the first section of the Act. The Court of Justiciary, "in respect the original petition and complaint is founded on a section of the statute which does not apply to apprentices, set aside the conviction." 23rd November, 1833, Hunter and Gilmour (not reported). The masters were prosecuted for damages, and compounded, and they then prosecuted the law agents who had the management of the statutory prosecution, who were found liable in relief. Per Lord Jeffrey, "If the agent really was at a loss which of the two sections to proceed on, it was open to him to proceed on both." 9th June, 1836, Frame & Son, affirmed on appeal, 18th June, 1839. The lord chancellor observed, "Had the construction been thought doubtful, all danger of miscarriage might have been avoided by founding on the statute generally, without specifying the particular section," 12 Jur. 87.

17. An objection to a conviction was repelled where the complaint referred to the Act as being passed in the reign of George II. (instead of Geo. IV.), c. 34, 17th June, 1823, but gave the title correctly, the court holding that "the identification of the statute founded on was rendered complete by the date and title, which were correctly given" (see, however, M'Kirdy, 25th June, 1855). But where the conviction proceeded on admission of no warning being given, without any proof of warning being necessary, or inquiry into the nature of the complaint as directed by the statute, it was quashed. Per Lord Justice-Clerk Hope—"The justice was entitled to ask whether the accused admitted or denied the charge, but not to interrogate them further." 8th July, 1843, Black; 1 Swin. 564.

18. A servant, after being two years at work, engaged by writing to serve for six years, including the two already served, and his name was entered on the pay book. The conviction as a workman under a contract of service was held good. It was held no objection that the servant had made one of the complainers a witness. The case of Cameron, 1 Irv. 316, was referred to in support of this objection. This was a case under the Embezzlement Act, on which there was a reference to the master's oath, which was held to be incompetent. The court did not decide whether the complainer could be a witness for himself, or be forced to give any evidence except his preliminary oath. 24th November, 1856, Paul; 2 Irv. 537.

19. It was held by a majority that it was competent to grant warrant to apprehend a servant for absenting himself; but the conviction was set aside as being disconform to the statutory offence, as set forth in the prayer of the complaint. 24th November, 1856, M'Innes; 2 Irv. 548.

20. A conviction was set aside where the forms of the Summary Procedure Act were adopted, but the alternative of abatement of wages in lieu of imprisonment was omitted, though so far supplied in the conviction. 23rd January, 1865, Thomson.

21. A conviction against a collier was objected to—1st, Because there was no

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sufficient specification of contract set forth in the complaint, as it was not stated that the contract was for a fixed term; and 2nd, whilst the offence was charged as desertion and absence, the conviction was "of the offence charged," but did not specify which; and 3rd, the justices had not sufficiently inquired into the nature of the complaint. The court refused a bill of suspension with expenses. 9th March, 1846, *Mason*; *Arkley*, 39.

22. A conviction against a smith was objected to—1st, That the Christian name of the complainer had been originally written in the complaint and oath *James*, and altered to *John* after both were signed, and other deletions and erasures made; and 2nd, that the conviction contained an allowance of an aliment of 4d. per day during imprisonment. The court repelled the first two reasons of suspension, observing "that complaints under this and similar statutes have repeatedly been decided not to be instruments:" after inquiring and finding that the aliment allocated was the usual allowance of the prison, the suspension was refused with expenses. 20th May, 1839, *Gerrond*; 2 *Swin*. 390.

23. There is no authority under the statute to conclude for damages. 24th May, 1834, *Abbot*; 6 *Jur*. 342.

Note.—It would be likewise incompetent to conclude for costs, although the accused would be probably entitled to expenses if charge were dismissed.

24. A conviction was quashed on appeal by the servant on the ground that hard labour had been omitted in the conviction in addition to imprisonment. 30th June, 1862, *Ferguson*; 4 *Irv*. 196.

25. The same result followed where the declaration of the accused parties had not been authenticated by the judges. The suspension in this case had been brought after the imprisonment had been undergone. 25th June, 1855, *French*; 27 *Jur*. 500.

26. A suspension was refused on the ground that it was not set forth with sufficient distinctness that delay at the trial had been asked and refused. 9th March, 1862, *M'Lean*; 35 *Jur*. 319.

27. A conviction was set aside because the proof had not been reduced to writing; and the servant was held not barred from pleading the omission because of his consent thereto, but refused expenses on that ground; and the court expressed a unanimous opinion that it was still competent to proceed against the servant according to law. Per Lord Justice-Clerk—"We are here considering a decidedly criminal case, inferring a punishment of three months' imprisonment with hard labour, and a case only and wholly reviewable in the criminal courts. In criminal cases, unless there be an express dispensation, the evidence on which a sentence may pass must be in writing, properly authenticated and preserved with due care. No consent, however formal, can dispense with what the party had no right to dispense with—that which was established for the public good. 24th and 25th November, 1845, *Penman*; 2 *Broun*, 586.

Note.—The principle upon which this, or, indeed, any of the cases under the statute, can be called a "decidedly criminal case" is not apparent. The essence of a crime consists—1st, In the *commission* of an *unlawful* act; or 2nd, in such an *omission* of a *lawful* act as amounts to criminal neglect of a public duty, stamped in both cases with certain fixed or arbitrary pains or penalties. Unlawful acts may be divided into such as are *mala in se*, naturally wrong, or *mala*

prohibita, wrong because they are prohibited. Under which of these heads can the case in question be brought? If it is said that it falls under that of a *malum prohibitum*, then it may be asked what is the *malum* that is prohibited? The answer must be—the “breach of a *private* contract.” The violation of a contract, however, although an illegal, is not an unlawful act. But why should the breach by *one* of the contracting parties only, be a crime, when that of the other is merely held to be a civil wrong? or why should the breach of *one* description of contract be considered as a criminal offence, when all the rest of the world’s contracts may be broken with criminal impunity? It may be said that contracts such as that in question, although private, are entered into by such immense numbers of people that the breach of them actually amounts to an offence against trade and commerce, and not merely against the individual whose particular rights are infringed. But upon this principle one could justify a law passed by the landed aristocracy to punish every merchant and trader who failed to pay his acceptances, with three months’ imprisonment and hard labour, on the ground of such failure being an offence against the mercantile credit of the country; while a defaulting nobleman or gentleman would only be liable to the civil consequence of his inability to pay. Both might, indeed, be doomed to vegetate within the precincts of that grim establishment, which the politeness of our ancestors dignified with the title of the “house of correction,” but the one would go there upon the footing that *luat in pelle qui non potest in crumena* (“let him pay in his skin who cannot with his purse”), to put up with a little wholesome restraint at the expense perhaps of his creditor, but where at least he might, if he had the means—

“Sperne cibum vilem, nisi Hymettia mella Falerno
Ne biberis diluta”

(“Despise homely food, nor drink Falernian wine unless diluted with the finest honey.”—Hor. Sat., lib. ii. s. 215); the other would, however, be sent there as a felon, to tease, or rather to be teased by, obdurate oakum, and to associate with criminals, and where, moreover, he would be told—

“Cum sale panis
Latrantem stomachum bene leniet.”

(“Bread and a little salt will serve to stay your craving stomach.”—*Ib.*). Which of the two could be called upon principle a “decidedly criminal case?” and why should one of them be more criminal than the other?

28. In the case where a master had been examined, although without objection, as a witness in support of his own complaint, the conviction was set aside. Per Justice-Clerk—“The very rule that we cannot look into the proof makes the examination of the complainer the more mischievous.” 9th March, 1846, French; Arkley, 41.

Note.—Some people might be inclined to think that the mischief lay in the want of power to look into the proof itself. Both employers and employed can now be examined as witnesses, 30 & 31 Vict. c. 141, s. 16. The rule which excluded the evidence of the parties was founded upon the assumption that the cause of complaint was a “criminal offence.”

29. A conviction was sustained where a writing was admitted without proof or objection as evidence of the contract. Per Lord Mackenzie—“The party took

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other objections, but did not take this one. The circumstances warranted the justices in believing that there was a written contract." 13th July, 1846, Wilson; Arkley, 83.

30. A conviction was quashed where the record mentioned two witnesses as having been sworn, but omitted any such statement as to the remaining one. Per Lord Justice-Clerk—"I do not say whether it would be necessary to enter on the record that *each* witness was sworn, if there was a general entry at the commencement that the following witnesses were sworn and examined." 24th June, 1847, Gold; Arkley 318.

31. A conviction was quashed because the justices had tried and sentenced the complainer in a court from which the public were excluded. The court held that by the common law of Scotland police courts were public, and no sentence pronounced when the public were excluded could be allowed to stand, there being no proof of the necessity for protecting the court. 11th June, 1850, Finnie; Shaw's Just. Rep. 368.

32. The court refused to review a conviction on the merits. I do not think that because the proof is taken in writing, therefore the case is necessarily subject to review—that may enable us to see that the proceedings have been formal and correct; per Lord Handyside. 24th November, 1856, M'Lean; 2 Irv. 553.

Note.—There is no exclusion of review of the superior courts in the Act 4 Geo. IV. c. 34 itself. There is, however, a declaration "that every order or determination of such justice or justices made under this Act shall be final and conclusive, anything in either of the said Acts contained to the contrary notwithstanding;" but this relates merely to things to be done under the 4 Geo. IV. relative to matters comprehended in the Acts 20 Geo. II. c. 19, and 31 Geo. II. c. 11. In nothing have the decisions of the Scottish superior courts been so conflicting and vacillating as with regard to when and how far they can review sentences of inferior judicatories acting under statutes.

33. A declaration was taken from a party, which the justice held to be an admission of guilt. The conviction was set aside, the Lord Justice-Clerk (Hope) observing—"The justice ought to have asked the accused whether he pleaded guilty or not guilty. Who was to decide whether this man pleaded guilty or not guilty except himself? and can any one doubt that if the justice had put the question distinctly he would have pleaded not guilty?" Per Lord Ivory—"Evidence is competent after the plea of guilty or not guilty has been put, either in express terms or virtually. If the accused pleads guilty, then no more proof is required. If he pleads not guilty, the justice ought then to order a proof. A party may be perfectly competent to plead guilty or not guilty, but to interrogate him is to put him to disadvantage, which may in many cases amount to oppression, and like this plea may be extended to matters for which it was never intended." 5th December, 1853, Logan; 1 Irv. 329. *Vide* Clark, 19th November, 1853; *ib.* 309. Hopton, 5th March, 1858; 3 Irv. 51.

Note.—The fact of a party pleading guilty to a charge is not proof of the offence having been committed, so that "no more proof is required." It simply renders it unnecessary to lead any proof at all, and this is no doubt what Lord Ivory meant.

34. The following points have been decided, viz.:—1st, That it is no objection DECIDED POINTS IN SCOTLAND UNDER 4 GEO. IV. C. 34. that *the servant had entered into the service*, not on a verbal, but on a written agreement signed only by himself; 2nd, that minority was no objection, the man being seventeen years of age, and earning high wages; 3d, when the diet was adjourned to permit the servant to return to his master as promised by him, it was no objection that he was again apprehended and convicted under the original complaint. Per Lord Justice-Clerk Hope—"If the application is to enforce a contract *not yet entered upon*, then such contract must be in writing, and signed by both parties." "Courts of law will unquestionably set aside a contract by a minor, where it is clear that advantage has been taken of him; but here it cannot be said that such protection is necessary." "The proceeding of the magistrates in adjourning the diet appears to me to have been most lenient towards the lad, and the most anxious pains seem to have been taken to insure his receiving justice." 16th June, 1853, *Argo*; 1 *Irv.* 250.

Note.—In *Penman's* case, No. 27, it was held that the servant had not the power of dispensing with written evidence, because it was "a decidedly criminal case," and because "no consent, however formal, can dispense with what the party has no right to dispense with—that which was established *for the public good*." But in the present case the master is allowed to dispense with the course of justice itself. Is it possible that that can be a "criminal case" which it is in the power of a party to withdraw at any time from the hand of the judge?

35. A conviction was quashed where the defender's name was not set forth therein, but merely described as the "defender." Per Lord Moncrieff—Who ever saw a sentence of any court which did not state the name of the party? 20th December, 1837, *Dunn*; 1 *Swin.* 629.

36. A complaint charged refusal to work, but the conviction was for absence. The sentence was quashed, Lord Cockburn observing—"Absenting oneself from work, and refusal to work, are not the same offence; just as desertion by a soldier is not disobedience of orders, though it may imply it." The court were divided as to the legality of awarding, in addition to imprisonment, an abatement "of wages due, and to fall due, during the term of imprisonment." The majority held that it was meant only to abate the wages during the period of imprisonment; and they all held that it would have been illegal to forfeit the whole wages, and award imprisonment besides. 1st December, 1845, *Mullen*; 2 *Broun.* 664.

37. A conviction was suspended where the servant was charged *specially* with leaving his work unfinished, and of seducing other servants to leave their work, and he was convicted *generally* of the section of the Act. 22nd January, 1842, *M'Nab*; 1 *Broun.* 41.

38. The Quarter Sessions had dismissed a complaint, and because of absence from service they discharged the servant, and abated his wages. The court held unanimously that the justices had exceeded their powers in awarding both punishments. Per Lord Justice-Clerk Hope—"The principle is to prevent desertion in search of better wages; but the penalty imposed is either dismissal from service, or forfeiture of wages already earned. These are the alternatives, whereas you have proceeded to impose both. That is clearly beyond the statute." 20th December, 1848, *Methven*; 1 *Shaw's Just. Rep.* 146.

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—See *Mitchell v. Morrison*, 25th June, 1838, House of Lords; *R. v. Recorder of Bristol*, 24th November, 1854, Weekly Reporter.

39. A conviction was sustained when the same day the justice amended the sentence by withdrawing the abatement of wages in the case of an apprentice. 13th December, 1855, Stewart; 2 Irv. 327.

40. Found not to be necessary in the conviction of an apprentice for absconding and desertion, to add *without* lawful cause. 28th February, 1859, M'Adam; 3 Irv. 337.

41. Where an agreement required fourteen days' notice on either side before dissolving the contract, and where the master had changed the mode of ascertaining the quantity of coals put out, which materially affected the amount of wages, it was held not to constitute such a change of the contract as to deprive the master of the necessary remedy of the statute. Per Lord Handyside—"If there is a radical change in the contract, I am not prepared to say that the master is entitled to this summary remedy; but if the contract is truly the same with some difference merely as to the mode of ascertaining the amount due, it does not appear to me that a workman is justified in seeking to obtain redress by the strong step of desertion." 5th December, 1853, Robertson; 1 Irv. 324.

Note.—This is a very doubtful decision, a *radical* change made by the master at his own hand must necessarily deprive him of any remedy under the statute—a change which materially affects the amount of the servant's wages, not in anticipation when the contract was made, ought also to do so. One who breaks through a contract and virtually sets up another, should have no right to invoke the aid of a penal statute to punish a withdrawal which is the direct consequence of his own breach of engagement. It is a trite rule in the law of contracts, that both parties must be bound or neither. Lord Ivory's opinion in this case seems to be sound, although it did not prevail. See case of *R. v. Lord*, 12 Q. B. 757; where an infant (minor) entered into a contract which authorized the master to stop his wages when the steam engine stopped working. He absented himself, and was convicted under the 4 Geo. IV. c. 34. Conviction quashed, as contract was inequitable, and therefore not binding. See also *Rider v. Wood*, 1 Law Times, N. S. 30; S. C. 29; L. J. M. C. 1; *Ashmore v. Horton*, 1 Law Times, N. S. 58; S. C. 29; L. J. M. C. 13.

42. A conviction, following upon a charge against a collier for absenting himself, at least neglecting to fulfil his contract, was sustained by a majority of the court as not alternative. Per Lord Mackenzie—It seems a good conviction of failure to work on the part of the servant, either by his not coming to his work, or by his not working when he did come. 24th November, 1845, Penman; 2 Broun, 568.

Note.—It is difficult to see how it can be said that this charge is not alternative. The 3rd section of the Act says, "or having entered into such service shall *absent* himself or herself from his or her service *before* the term of his contract, or *neglect* to fulfil the same." Absence is, therefore, *one* ground of complaint, and neglect is *another*. Absence no doubt implies neglect, in popular language; but neglect may take place when there is no absence, at least none that would justify an application under the statute. The ground upon which Lord Mackenzie puts it does not seem to be warranted by the statute. "Failure to work" is not one of the causes referred to in the Act; failure

to work is simply *not working*, which does not necessarily imply fault on the part of the individual bound to work, for it may happen from justifiable causes. "Neglect to fulfil," however, which is the gravamen of the statute, does of necessity infer blame. His lordship says, that it "seems a good conviction of *failure to work* ; either, 1st, "By his not *coming to his work* ; or, 2nd, "by his *not working* when he *did come*." Not coming to his work is clearly *absence* from work." "Failure to work" by "not working when he *did come*" amounts to assigning the non-performance of a thing as the cause of its non-performance. If it means anything it means *neglect*. The Lord Justice-Clerk (Hope) and Lord Wood were opposed to this decision.

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43. A conviction was set aside where it appeared by the evidence laid before the justices that the servant was not working under the *verbal* engagement set forth in the complaint, but under a subsequent *written agreement*. Per Lord Justice-General Boyle—"In a criminal prosecution everything must be done with the greatest regularity and care. We may certainly look at the evidence to see how the justices have proceeded; and here we have distinct evidence that the servant had entered into a written engagement, under which he was serving at the time of the complaint, and that he was not serving under the verbal agreement libelled on." 16th January, 1847, Blyth; Arkley, 225.

Note.—If this is not reviewing a case upon the merits, where is the line of distinction to be drawn? It is not said that there was anything wrong in point of form, or that there was an excess of power on the part of the justices. The review is simply that of the *evidence* led in a case unassailable except upon the soundness of the decision given upon the evidence adduced. From a consideration of that evidence the court found that the justices should have attributed the service to the written agreement, and not to the *verbal* one; and that, therefore, the servant was not *guilty* of the offence charged. Is this not to all intents and purposes a review upon the merits of the case? The manner in which it is attempted to get over the difficulty is curious, if not amusing:—"We may certainly look *at* the evidence *to see* how the justices proceeded." It is one thing, however, to look *at* the evidence, to see that it possesses the necessary external legal requisites and forms; it is quite another to look *into* it, to see whether the decision is contrary or not to the evidence, which appears to have been done here. Indeed, there is hardly an attempt to conceal this, for it is added, "and *here* we have *distinct evidence* that the servant had entered into a written engagement," &c.

In many of these cases, in fact, the court appears to have executed pretty frequently the saltatory movements of a certain Greek dance, in which the performers having danced a certain number of steps forward danced an equal number back again.

44. It was held that review on the *merits* of a conviction under the Act was excluded, and that it was sufficient to make a general reference in the complaint to the regulation of the complainant's works, and which were produced with the complaint. 20th May, 1830, Milloy; 2 Swin. 381.

45. Held unanimously that the Court of Session had no power to review the proceedings of justices under this Act. Per Lord Meadowbank—"I am clearly of opinion that the statute creates what is to be held and deemed to be a *criminal*

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offence, and, therefore, all proceedings must be cognizable in the Court of Justiciary." 13th February, 1836, Cooper; 8 Jur. 238.

46. In a suspension by an apprentice of a conviction on account of misconduct, it was objected to the relevancy of the petition, (1) That no facts were alleged constituting misconduct or ill behaviour within the meaning of the Act 4 Geo. IV. c. 34; (2) that it is incompetent to grant warrant for the summary apprehension of an apprentice, except when he has absconded; (3) that the proceedings were oppressive; (4) that the instance was bad; (5) that the terms of the complaint were not in conformity with the Act. *Repelled. Macnab v. Stewart*, 26th November, 1866; Scot. Law Rep., vol. iii. p. 57.

47. Held that a complaint under the twenty-fourth section of the Summary Procedure Act (27 & 28 Vict. c. 53) by a master against his servant for absenting himself from his service, must be instituted within six months from the commencement of the absence. *Laidlaw v. Sharkey*, 26th November, 1866; Scot. Law Rep., vol. iii. p. 59.

Prosecutions are now regulated in Scotland by the Act 27th and 28th Vict. c. 53, commonly called "The Summary Procedure Act, 1864."

CHAPTER III.

II.—CRIMINAL LEGISLATION, AS AFFECTING WORKMEN, SERVANTS, AND APPRENTICES, PRIOR TO 1824.

It has often been matter of discussion, in questions arising under Acts of Parliament, what was a criminal prosecution, and what a civil—what was a *malum in se*, and what merely a *malum prohibitum*; nor is this a point which can yet be said to be so demonstrable as to be unaccompanied by doubt, notwithstanding the Acts which have of late years been passed for each of the three countries to facilitate summary criminal procedure (*a*). In the classification of the subject, however, which has been here followed, the head of civil legislation has been assigned to all statutes involving merely provisions with regard to the breach of civil contracts, although the legislature may have chosen to visit that breach against *one* of the parties with penalties of a criminal nature. The legislature, however, can as little change the principles of abstract justice as it can those of religion or morality, and hence it is as powerless to make the non-fulfilment of a private agreement a crime, although it is certainly not a virtue, by awarding to it a criminal punishment, as it is to brand religious heresy as a vice by the martyrdom of a victim.

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Division of
offences into
mala in se
and *mala*
prohibita.

In considering this branch of the subject it is not necessary that we should go further back than the Act 13 Geo. II. c. 8 (*b*), intituled “An Act to explain and amend an Act made in the first year of the reign of her late Majesty Queen Anne, intituled ‘an Act for the more effectual preventing the abuses and frauds of persons in the working of the woollen, linen, fustian, cotton, and iron manufactures of this kingdom, and for extending the said Act to the manufactures of leather.’” It is enacted by section first, “That if any person or persons, hired or employed in the working up of any woollen, linen, fustian, cotton, or iron manufactures, shall purloin, imbezil, secrete, sell, pawn, exchange, or otherwise

13 Geo. II.
c. 8.

(*a*) 11 & 12 Vict. c. 43 (Jervis’ Act); 14 & 15 Vict. c. 93, the Petty Session (Ireland) Act; 27 and 28 Vict. c. 53, Summary Procedure (Scotland) Act.

(*b*) 13 Geo. II. c. 8. Sections 7 and 8 of this Act are now superseded by the Act 30 & 31 Vict. c. 141.

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ING WORK-
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18 Geo. II. c.
8.
Provisions
with regard
to purloining
of materials
by persons in
the woollen,
linen, and
other trades.

Penalty
double of the
damage and
costs.

On failure of
payment of
fines to
be im-
prisoned,
whipped, and
to be kept to
hard labour.

Penalties
and punish-
ment in case
of second or
subsequent
offence.

Provisions
with regard
to parties
engaged in
the manu-
facture of
gloves,
leather,
boots, &c.,
who may
have pur-
loined ma-
terials.

Penalties in
case of sub-
sequent con-
viction.

illegally dispose of any the materials with which he, she, or they shall be respectively intrusted to work up such woollen, &c., manufactures, whether the same be or be not first made up or manufactured, or shall reel false or short yarn, the person or persons so offending, and being thereof convicted in manner prescribed by the said Act of the first of her said late Majesty's reign, shall forfeit double the value of the damages which the owner or owners of such materials shall respectively sustain thereby, together with full costs of prosecution for every such offence; and in case immediate payment of the respective forfeitures, together with such costs of prosecution as aforesaid, shall be neglected or refused to be made, that then it shall and may be lawful, to, and for, the same justice of the peace, before whom such conviction shall be made, to cause the offender or offenders to be committed to the house of correction, to be there whipped and kept to hard labour for any time not exceeding fourteen days."

In case of a second or subsequent offence, the forfeiture was declared to be four times the value of the damages; and in the event of failure in immediate payment thereof and costs of prosecution, the offender could be imprisoned with hard labour for any period not more than three nor less than one month, and could be whipped once or oftener at the market place or cross of the town where the offence was committed.

By section second the buyers or receivers of such articles, knowing them to have been so purloined or embezzled, are subjected to the same penalties.

By the fourth section persons employed in cutting, paring, washing, dressing, sewing, making up, or otherwise manufactur- ing gloves, breeches, leather skins, boots, shoes, slippers, wares, or other goods or merchandise to be made use of in any of these trades, who should purloin any of the said articles, or any of the materials thereof, or "do or wilfully permit *any other act to lessen* the value of such," was bound to make recompense to the party injured not to exceed double the value thereof, with the costs of conviction, leviable by distress and sale of the offender's goods; and failing such goods, then he was liable to imprisonment for fourteen days with hard labour, and to be publicly whipped. In case of a subsequent conviction the forfeiture was four times the value of the damages, and costs of conviction; and in case of the penalty not being paid, imprisonment could follow for any period not

exceeding three months nor less than one, with hard labour, and he could also be whipped once or oftener as to the justice should seem reasonable.

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The fifth section provides that any person who should knowingly or willingly buy or receive, accept, or take by way of pawn, pledge, sale, or in any other manner from any of the said parties any of the aforesaid articles, "or *offer* so to do," should make a suitable recompense within two days after the matter or fact should be determined by a justice or justices, or be subject to distress and sale, and be liable to the same punishment as the parties who purloined the same, both for a first and subsequent offence.

13 Geo. II. c. 8. Penalties on parties taking materials in pawn, pledge, or otherwise.

This Act was followed by another Act, the 22 Geo. II. c. 27 (c), intituled "An Act for the more effectual preventing of frauds and abuses committed by persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, and silk (d) manufactures, and for preventing unlawful combinations of journeymen dyers and journeymen hot-pressers, and of all persons employed in the said several manufactures, and for the better payment of their wages."

22 Geo. II. c. 27.

Relates to parties employed in making of hats and in woollen and other trades.

This Act was passed upon the recital that the penalties and forfeitures before-mentioned had not been found to be sufficient to deter persons from committing the offences referred to in the said Act; and that many persons employed in the making of felts or hats, and in preparing or working up the manufactures of fur, hemp, flax, mohair, and silk, &c., had been guilty of divers frauds and abuses by purloining and embezzling the materials with which they had been intrusted. It is therefore enacted that any person convicted of such an offence, or of reeling false or short yarn (e), should be committed to the house of correction for fourteen days with hard labour, and be once publicly whipped at the market place, or other public place of the town where the offence should be committed. In case of a second or subsequent conviction, the punishment might be imprisonment for any term not exceeding three months nor less than one month with hard labour, and to be publicly whipped twice, or oftener.

Preamble of Act that former Acts had not operated to repress frauds.

New provisions.

Subsequent offence imprisonment, hard labour, and whipping.

(c) 22 Geo. II. c. 27.

(d) Repealed as to woollen, linen, cotton, flax, mohair, and silk manufactures by 6 & 7 Vict. c. 40.

(e) This reeling false or short yarn was afterwards regulated by 14 Geo. III. c. 44: first offence was a penalty

not exceeding 20s. nor less than 5s.; second offence, not exceeding £5 nor less than 40s.; third and subsequent offences, imprisonment and hard labour for a month, and to be once publicly whipped.

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ING WORK-
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29 Geo. II.
c. 27.

Punishment on
parties re-
ceiving arti-
cles knowing
them to have
been pur-
loined.

Punishment
for subse-
quent offence,
imprison-
ment with
hard labour.

Powers to
justice to is-
sue warrant
to search
houses.

Materials
found to be
taken away.

On failure of
parties to
show how
they came
by materials,
held to be
purloined,
and could be
sold.

Punishment
of parties
not re-
turning ma-
terials left
over.

Parties receiving such articles, knowing them to be so purloined, were liable to a penalty of £20, and in case the same was not immediately paid they could be imprisoned for fourteen days with hard labour; and if within two days of the expiration of the fourteen days the forfeiture was not paid, the justice was empowered and required to order the offender to be publicly whipped. A second or subsequent offence was visited with a penalty of £40, failing payment of which imprisonment with hard labour for any period not exceeding three months nor less than one month, with public whipping once, or oftener, at the discretion of the justice.

By the fourth and fifth sections power is given to the justices, in the case where a party was charged and convicted of purloining or embezzling any of the said materials, or of receiving or buying the same, to issue a warrant for searching their houses (f). If upon any such search or searches "there shall be found any thrums or ends of yarn, or any other materials of silk," &c., the party or parties empowered to search was empowered to bring the materials to the justice or justices to be kept in safe custody. If within twenty-four days the parties from whose houses these materials were taken could not show that they came into their possession in an honest and lawful manner, to the satisfaction of the justice or justices, and that they were the lawful owners thereof, "then and in every such case the materials shall be deemed and adjudged to be purloined and embezzled; and it shall and may be lawful for the said justice or justices to direct all such thrums or ends of yarn, or other materials, to be publicly sold."

It is enacted by section seventh, that if any person intrusted with materials, in order to prepare or work up or manufacture the same, should not use the whole of them, and should, if required to return what has not been used, fail to do so within twenty-one days, he should be deemed to have embezzled or purloined the same, and should be subjected, on conviction, to the same punishment as persons convicted of these offences as before-mentioned.

The eighth section gives power to the justice to issue his warrant upon complaint or oath as to any offence against the Act, and to determine the same (g).

(f) By 17 Geo. III. c. 56, s. 10, power is given to make a search before conviction.

(g) This section is repealed by 17 Geo. III. c. 56.

By section nine, if any person hired or employed to prepare or work up any of the manufactures referred to in the Act should neglect or refuse the performance thereof, by procuring or permitting himself to be subsequently retained or employed by any other master or person whatsoever, before he should have completed the work which he was first employed to perform, and which was first delivered to him, and being convicted thereof on the oath of one or more credible witness or witnesses, he could be committed to the house of correction for any time not exceeding one month, with hard labour.

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AS AFFECT-
ING WORK-
MEN, &c.

22 Geo. II.
c. 27.

Punishment
of party ne-
glecting or
refusing to
work up
materials, or
hiring him-
self to an-
other em-
ployer.

The tenth section provides that nothing contained in the Act should be construed to repeal any of the provisions contained in an Act made in the thirteenth and fourteenth years of the reign of King Charles II., intituled "An Act for regulating the Trade of Silk Throwing;" and an Act made in the twentieth year of the reign of King Charles II., intituled "An Act to regulate the Trade of Silk Throwing (*h*);" or in an Act made in the eighth and ninth years of the reign of King William III., intituled "An Act for the further encouragement of the manufacture of Lustrings and Alamodes," &c.

13 & 14 Car.
II. c. 15; 20
Car. II. c. 6;
8 & 9 Will.
III. c. 38, not
affected by
this Act.

The eleventh section provides "that no person shall, by virtue of the said Acts hereinbefore last mentioned, or of this Act, suffer or be liable to suffer the punishments thereby inflicted twice for one and the same fact or offence."

The twelfth section relates to the extension of certain portions of the Act 12 Geo. I. c. 34 (*i*), "An Act to prevent unlawful combinations to journeymen dyers, journeymen hot-pressers, and all other persons employed in the woollen manufactures of the kingdom, and to journeymen, servants, workmen, and labourers employed in the making of felts or hats, and in the manufacture of silk, mohair, fur, hemp, flax, linen, cotton, fustian, iron, and leather" (*j*).

Certain por-
tions of 12
Geo. I. c. 34,
relate to
dyers, hot-
pressers, and
others.

This section will be more fully referred to under the head of "The Laws against Combination by Workmen."

The next Act to which reference may be made is 17 Geo. III. c. 56, commonly called the Embezzlement Act (*k*). It proceeds

17 Geo. III.
c. 56. (Em-
bezzlement
Act.)

(*h*) 13 & 14 Car. II. c. 15; 20 Car. II. c. 6.; 8 & 9 Will. III. c. 36.

(*i*) 12 Geo. I. c. 34.

(*j*) That part of section 12 which relates to combinations of workmen is repealed by 6 Geo. IV. c. 129; so much

of it as creates a felony is repealed by 9 Geo. IV. c. 31; and what relates to the payment of wages in goods by 1 & 2 Will. IV. c. 36. See 1 & 2 Will. IV. c. 37.

(*k*) 17 Geo. III. c. 56. Held to

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22 Geo. II. c. 27.

Preamble of 17 Geo. III. c. 56.

Provisions with regard to parties in woollen or other manufactures, embezzling materials by 22 Geo. II. c. 27.

On conviction might have been imprisoned, with hard labour and public whipping, by 22 Geo. II. c. 27.

Punishment for subsequent offences by above Act.

upon the following preamble :—" Whereas, by an Act made in the twenty-second year of the reign of his late Majesty King George II. (intituled An Act for the more effectually preventing of frauds and abuses committed by persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, and silk manufactures; and for preventing unlawful combinations of journeymen dyers, and journeymen hot-pressers, and of all persons employed in the said several manufactures, and for the better payment of their wages) (1), it was enacted that, if any person or persons whatsoever, who should be hired or employed to make any felt or hat, or to prepare or work up any woollen (&c., as before) manufactures, or any manufactures made up of wool, fur, hemp, flax, cotton, mohair, or silk, or any of the said materials mixed one with another, should, from and after the 24th day of June, 1749, purloin, embezzle, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any of the materials with which he, she, or they should be respectively intrusted, whether the same or any part thereof be or be not first wrought, made up, manufactured, or converted into merchantable wares, and should be thereof lawfully convicted in manner therein mentioned, before any one or more justice or justices of the peace of the county, riding, division, city, liberty, town, or place where such offence should be committed, or where the person or persons so charged should reside or inhabit, it should and might be lawful to and for the said justice or justices, by warrant under his or their hand and seal or hands and seals, to commit the person or persons so convicted to the house of correction or other public prison of such county (&c., as before), there to be kept to hard labour for the space of fourteen days; and also to order the person or persons so convicted to be once publicly whipped at the market-place or some other public place of the city, town, or place where such offender or offenders should be respectively committed; and in case of a further conviction in manner before prescribed by the said Act, for or upon a second

apply to Scotland in case of Battersby, 6 S. & D. 667. Sections 8 & 19 of this Act are now regulated by 30 & 31 Vict. c. 141. See opinions of Scottish judges in the above case, in which a history of the legislative measures bearing on the matter is given.

(1) The extraordinary combination of civil and criminal purposes embraced in the title of this Act is only one of the many absurdities which might be pointed out in referring to the series of Acts under consideration.

or other subsequent offence of the same kind, it should and might be lawful to and for the justice or justices before whom such conviction should be had, to commit the person or persons so again offending to the house of correction or other public prison as aforesaid, there to be kept to hard labour for any time not exceeding three months nor less than one month; and also to order the person or persons so again offending to be publicly whipped at the market-place or some other public place of the city, town, or place where such offender or offenders should be respectively committed, twice or oftener as to such justice or justices should appear reasonable. AND WHEREAS it is thought necessary to *vary the punishment* for the offences hereinbefore recited: Be it therefore enacted by the King's most excellent Majesty, &c., That from and after the 1st day of July, 1777, so much of the said recited Act as prescribes what the punishment shall be in any of the cases before-mentioned, or before whom such conviction shall be had, whether for a first offence, or a second or any subsequent offence, shall be repealed; and instead of inflicting the punishment so directed, the justices of the peace before whom the conviction shall be, shall commit the person convicted to the house of correction or other public prison, there to be kept to hard labour, in the case of a first offence, for any time not less than fourteen days nor more than three months, and in the case of a second or any subsequent offence, for any time not less than three months nor more than six months; and may likewise, for the first or for any subsequent offence, order the person convicted to be once publicly whipped, if such additional punishment shall by the said justice or justices be deemed proper" (m).

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ING WORK-
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17 Geo. III
c. 56.

Variation of
punishment
introduced
by 17 Geo.
III. c. 56.

Punishment
in case of a
first offence.

In case of a
subsequent
offence.

(m) The gist of all this rigmarole is, that the justice can give more imprisonment and more hard labour, but less whipping than before. How this can be said to "vary the punishment" it is not easy to see, except upon the Irishman's principle of feeding his pig one day and starving him the next, that the pork might be varied by a streak of fat and a streak of lean. The verbosity of these Acts of Parliament is something appalling. What could be expressed clearly and unmistakably in a few sentences, occupies whole pages of the direst repetition. No

wonder Judge O'Hagan remarked, in his admirable address at the meeting of the Social Science Association held at Belfast in September, 1867, "Bills introduced into the legislature are often inexact in their phraseology and slipshod in their frame. Centuries ago the statutes of the English Parliament had a lucid terseness which was wanting in those of a modern date, as any one may see who will compare the early Acts, copied by Mr. Froude in his history, with those of the last quarter of a century."

The latter remark applies with equal

II. CRIMINAL
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ING WORK-
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17 Geo. III.
c. 56.

Conviction
only compe-
tent before
two justices.

Penalties
imposed by
former Acts
increased.

Penalty of
£40 may be
awarded for
first offence
of taking
materials in
pawn or
pledge; not
to be less
than £20.

Punishment
on failure to
pay, im-
prisonment
and whip-
ping.

Penalties in
respect of
subsequent
offence of
taking in
pawn or
pledge £100
and not less
than £50.

Imprison-
ment and
whipping on
failure to
pay.

By the second section conviction is only competent before two justices; by the former statutes one was sufficient. By the nineteenth section (17 Geo. III. c. 56), one justice may issue his warrant to apprehend. No master hatter can act as a justice in any case against a party in that trade (n).

The third section, after reciting the second section of the 20 Geo. II. c. 27 (o), proceeds to narrate that as it was thought necessary to increase the pecuniary penalties directed to be imposed by that statute for the offences referred to in that section, and to vary their application; it is therefore enacted that so much of that Act as applies to the penalty or punishment of buying, receiving, accepting, or taking by way of gift, pawn, pledge, sale, or exchange, or in any other manner as is described by the said Act, and how the penalty shall be applied, and what punishment should be inflicted in case of non-payment, shall be repealed, and instead thereof the penalty for the first offence shall be any sum not more than £40 nor less than £20, and shall be applied in the manner therein pointed out (p). If the penalty is not paid on conviction, the justice shall commit the offender to the house of correction or other public prison for any period not more than six months nor less than three months, with hard labour; or he may send him to prison for three days, exclusive of the day of commitment, with an order that within that time the offender shall be once publicly whipped at the market-place or other public place as aforesaid.

In the event of the party being charged with a second offence, the justice is to commit him to prison until the next General or Quarter Sessions, and if there convicted, the penalty will be any sum not more than £100 nor less than £50; and on failure to pay on conviction imprisonment with hard labour will follow for any period not exceeding six nor less than three months, or, in the option of the court, an imprisonment of three days, with public whipping, as in the case of a first offence.

By the fifth section any person who shall sell, pawn, pledge, exchange, or otherwise unlawfully dispose of, *or offer* to sell,

truth to the collection of statutes known as the "Scots Acts," which are models of brevity and terseness.

(n) 17 Geo. III. c. 56.

(o) 20 Geo. II. c. 27, s. 2.

(p) This distribution is now regu-

lated by 58 Geo. III. c. 58, ss. 3 & 4. *Vide* R. v. Willock, 7 Q. B. 317; *in re* Boothroyd, 15 M. & W. 1. One-half goes to the poor of the parish, and, if the informer gives his evidence, the whole goes to the poor.

pawn, pledge, exchange, or unlawfully dispose of any of the materials referred to in the Act, on being convicted shall be liable to the same punishment as if he had been convicted of receiving purloined or embezzled materials, knowing them to have been so purloined or embezzled.

The sixth section, after reciting that materials which have been purloined or embezzled are frequently received by persons knowing the same to have been so purloined or embezzled, and such materials being afterwards worked up, or otherwise disposed of, renders it *difficult to convict such offenders*, enacts that, when any person (q) shall be brought up charged upon oath before two or more justices with being *suspected* of or with having purloined or embezzled, or with having received any such materials knowing the same to have been purloined or embezzled, or received from some person or persons *not entitled* to dispose thereof; and it shall be made to appear *upon the oath of one* or more credible witness or witnesses to the satisfaction of such justices (r), that such person has purloined or embezzled, or has received any such materials knowing the same to have been purloined or embezzled, or *received* from some person or persons *not entitled* to dispose thereof, such justices (s) may convict the accused, *although "no proof shall be given to whom such materials belong"* (t); and the persons so convicted shall be subject to the same penalties and punishments in the discretion of the justices as those already referred to as being applicable to parties convicted of buying or receiving the said materials (u).

More arbitrary powers could hardly have been given to any judge than these. That on the mere ground of getting rid of difficulty in obtaining a conviction, and of establishing a com-

(q) The complaint may either be verbal or in writing, but the oath must be in writing. A complaint addressed to *his* instead of *her* Majesty's justices of the peace for the county of , was not considered objectionable in the Scottish case of Mackenzie, 2 Swin. 152; and in Scotland the fiscal, or an informer, or the person injured, may prosecute. Jeffrey; 2 Swin. 479.

(r) Justices who convict must be present at taking of evidence. Wilson; 2 Broun, 231.

Reference to oath of complainer incompetent. Cameron; 1 Irv. 316. Robertson, 21st May, 1829, Court of Session.

(s) In England the words "such justices" are held to mean the *same* justices. R. v. Inhabitants of Ashburton; 2 New S. C. 316.

(t) See R. v. Cook, 1 Dowl. N. S. 300. Conviction cannot be reviewed by *certiorari*, that being taken away by twenty-second section.

(u) Proof of guilty knowledge is, under this section, thrown upon the informer, differing from the tenth. For the purpose of conviction it is not necessary that the materials should be recovered. M'Innerney; 2 Swinton, 596.

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17 Geo. III.

c. 58.

Parties selling or pledging or offering to sell or pledge materials known to be purloined, liable to same punishment as if they had originally received them.

On account of difficulty in convicting parties, oath of one credible witness held sufficient to convict persons receiving materials.

Not necessary to prove to whom materials belong.

Same penalties as before-mentioned.

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c. 56.

portable, easy, and expeditious method of attaining that object, the oath of one witness should be enough to charge an individual with the *suspicion* of having purloined or having received materials, knowing them to have been purloined or received, from some person not entitled to dispose of them; and also to convict him of the offence, even when no proof is or can be adduced to whom the materials belong—sounds somewhat startling, and seems to be an entire overstretch of the law for a very unwarrantable end, where the accused is to be tried without the benefit of a jury. It may not be necessary, perhaps, to aver or prove the actual ownership of the materials (*v*), but it ought to be alleged and proved that they were taken from the premises of some party whose property, or in whose lawful possession, they were. To exact nothing more, however, in the way of proof than the mere oath of *one* witness that the accused purloined the materials, or received them from some party not *entitled* to dispose of them, but the property or possession of which is not alleged nor proved to be that of any other person, is an indulgence which would hardly be ventured upon nowadays; in Scotland, at least, the public prosecutors find that they can get on perfectly well without availing themselves of the Act at all.

The seventh section limits the time prescribed by the 22 Geo. II. s. 27, for returning materials not used in manufacturing an article to eight days instead of twenty-one, as under that Act, and the punishment for failure to do so is made the same as that fixed for purloining or embezzling (*w*).

Penalties for
neglect to
finish work.

Section eight (*x*) deals with the matter of neglecting to finish work. The ninth section of the above Act of the 22 Geo. II. is repealed as not being effectual enough; and it is enacted that if any person hired or employed to prepare or work up any materials, shall wilfully neglect or refuse performance thereof for eight days successively, or shall take in any other materials, or hire himself to another master sooner than eight days before the completion of the work first taken, he shall, on conviction, be sent to prison for any period not exceeding three months nor less than one month with hard labour (*y*).

(*v*) *In re* Boothroyd, 15 M. and W. 1.

(*w*) Prosecutions under this section must be laid on both Acts.

(*x*) This section is now superseded by 30 & 31 Vict. c. 141.

(*y*) A weaver in Scotland was pro-

secuted under this section for refusing to work under a fifteen months' engagement, and convicted. Conviction quashed, as the statute 17 Geo. III. c. 56 was only held to apply to *materials* actually delivered for the purpose of

Under the ninth section any person who shall receive materials to be manufactured, giving a fictitious name, or who shall deliver the same to any other person, without the consent of the owner, to be manufactured, shall be liable to the same punishment as persons neglecting to perform work (z).

The tenth section, after reciting that it would "tend to the discouragement and suppression of such offences if the discovery and conviction of such offenders were rendered *more easy*," provides that upon oath by any *one* credible person that there is cause to *suspect* that any purloined materials are concealed in any dwelling-house (a), the justice may issue his warrant to cause such place (b) to be searched; and if any such materials (c) are

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ING WORK-
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Punishment
for giving a
fictitious
name.

In order to
render con-
viction *more
easy*, oath by
one credible
witness suffi-
cient to en-
title justice
to issue war-
rant.

being wrought up, and not to a *time* engagement, which was regulated by 4 Geo. IV. c. 34. It was also objected that an engagement for longer than a year could not be proved by witnesses. Kennedy; 1 Swin. 474.

A weaver was found not subject to the 4 Geo. IV. who had contracted to work a web at so much per yard without reference to time. M'Vey; 2 Broun, 102.

A conviction was set aside where the defence was sought to be proved by oath of complainer. Cameron; 1 Irv. 318.

(z) R. v. Goodfellow, Car. and M. 569.

(a) As to what constitutes a place, see R. v. Edmundson, 28 L. J. M. C. 213; S. C. Law Times Rep. 237.

(b) A search warrant is necessary. Davis v. Nest, 6 C. & P. 167.

(c) It has been held in Scotland that it is not necessary to specify in the complaint the *particulars* of the materials, but that this should be done in the *conviction*, setting forth also that they were materials suspected to be purloined, and giving the place of the offence. Per Lord Meadowbank—"This is a rigid penal statute, and we are required by statute to give it a strict interpretation; and where a statute gives a form, as is here done, for convictions, that form must be observed." M'Innerney; 2 Swinton, 590. It is enough if the complaint set forth that the articles are concealed or to be found within the house of the accused. Per Lord Mackenzie—"I am not certain that the statute requires

any *concealment* different from that possession on which rest convictions for reset of theft. It is sufficient to bring the party complained against under the requirements of the statute if the goods are found in his possession. The provision as to goods *concealed* is made with the view to the *search warrant* to be obtained if necessary." M'Kenzie; 2 Swinton, 152. A conviction was quashed on account of want of specification of the *locus delicti*. Per Lord Moncrieff—"The specification of the *place* is even more necessary than that of the *time* of committing the crime, for unless it was committed within the county there was no jurisdiction." Yeaman; 1 Swinton, 247. There appears to be a difference between materials sought for under the tenth section and those referred to in the sixth. It has been said that under the sixth a conviction is competent though the materials have been wrought into a completed article, but that this would not hold under the tenth, where the materials must be obtained in their original state. Where iron rods had been stolen, and a chain cable made from them was seized, it was held that the tenth section did not apply. Per Lord Cockburn—"I cannot apply the word *material* to the body of a completely finished article. If the interpretation of the statute contended for by the respondent be correct, he might have gone into another shop in search of mole skins and seized a hat. It appears to me that the moment the materials becomes

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AS AFFECT-
ING WORK-
MEN, &c.
17 Geo. III.
c. 56.

No proof
necessary to
whom mate-
rials belong.

Penalty.

Power to
constables to
apprehend
suspected
persons.

Parties not
giving satis-
factory ac-
count as to
possession of
materials, to
be deemed
guilty of
misdemeanor.

found, the person in whose house they are so found shall be brought before any two justices (d), and if he cannot give an account to their satisfaction of how he came by the same, he shall be deemed to be guilty of a misdemeanor, *even although no proof shall be given to whom such materials belong*, and shall forfeit and pay the sums mentioned in section fourteen, viz., for the first offence, £20; for the second, £30; and for any subsequent offence, £40—which may be levied by distress; and if no sufficient distress is found, the party convicted may be committed to prison for the period of one month for the first offence, two months for the second, and six months for every subsequent offence (e).

The eleventh section gives power to constables to apprehend all persons suspected of having or carrying after sunset any materials supposed to be purloined; and if the party in possession of such materials shall not produce the person duly entitled to dispose of them, from whom they were bought or received, or some credible witness to testify on oath to the sale or delivery thereof, or shall not give an account to the satisfaction of the justice how the materials were come by, the person so apprehended shall be deemed guilty of a misdemeanor, and shall be

a completed article the obligation to account for the *material* ceases." Lord Mackenzie dissented—"The statute provides that if a party does not account to the satisfaction of the justices for the manner in which he came by the articles, he shall be held guilty of a misdemeanor. The advocator gave an account with which the justices were not satisfied. If I thought they ought to have been so, I would have reversed their judgment; but as this is not the case, I am of opinion that it should be sustained." Lord Medwyn concurred in this opinion. The Lord Justice-Clerk, with whom the majority concurred, was of opinion that the accused "had given as satisfactory an account of the matter as could have been expected from the most respectable dealer." Gillies; 2 Swinton, 454. In Duff, 2 Swinton, 615, the decision was similar. The principal articles seized were *manufactured goods*. The conviction was held not good as to two hanks of worsted yarn, because if the conviction was not sustainable as to

the principal articles referred to, it cannot be divided so as to hold a part good. Per Lord Moncrieff—"I think the conviction is bad, because it does not specify that the offence of the party was having in his possession *materials of manufacture suspected to be purloined or embezzled*." In the case of Barnet, 16th Feb., 1849, Scot. Jur., vol. xxi. p. 190, an action of damage was sustained without an averment of malice for improper use of a warrant under the tenth section to search for manufactured goods, although no conviction followed. Per Lord Justice-Clerk Hope—"As the statute does not authorize any search for goods at all, but only for materials, there can be no doubt that the warrant is illegal."

(d) In England a conviction which did not state that the complaint was made to different justices from those who determined it, was quashed. *R. v. Wilcock*, 7 Q. B. 317.

(e) The *onus* of proof under this section is on accused party. Case of *M'Innerney*, *supra*.

punished as above stated, even though no proof shall be given of the ownership of the said materials.

The justices may, by section twelve, at the request of persons so charged with being in possession of purloined materials, appoint a reasonable time to produce the persons entitled to dispose of the materials, upon the party making the request entering into recognizances in manner therein pointed out (f).

By the thirteenth section the materials taken from any person convicted shall be deposited with the churchwardens of the poor of the place where they were found, and if any person can prove his property in them they shall be delivered up to him on paying charges of removal and other expenses; but if no person prove his property in them, they are to be sold, and the proceeds applied as pointed out in this section.

The fourteenth section applies to the amount of the penalties and extent of imprisonment to be imposed and inflicted, and has already been referred to (g) at page 104.

Power is given by the fifteenth section to the masters or owners of materials delivered out to journeymen or other persons to work up the same, to enter at all seasonable hours the workshops or outhouses of such parties, to inspect the state and condition of such materials; and in case of their refusal they shall forfeit and pay such sum of money, not exceeding 100s. nor less than 10s., as the justice may think proper, to be recovered and applied in the same manner as is by the Act directed for being in the possession of any such materials without being able to account satisfactorily for such possession.

It is also provided by the sixteenth section, that the penalties in the Act 22 Geo. II. c. 27, and in the Act under consideration, relating to materials, shall be applicable to the tools and implements and drugs or ingredients with which any workman shall be intrusted.

By the seventeenth section, if any journeyman dyer shall, without the consent of his employer, dye any woollen, linen, or other articles, he shall, for the first offence, forfeit 10s., for the

(f) *Davis v. Nest*, 6 C. & P. 167.

(g) In Scotland it has been held that an attempt to levy from goods must be made before warrant to commit. *Malonie*; 2 Swinton, 485; *Skinner*; 1 Broun, 67. See opinions of Scottish

judges. See *Forgan*, 20th February, 1811, App. to Fac. Coll., where resisting a poinding where distress was the remedy under statute was not held to be deforcement. Statute regulating distress is 11 & 12 Vict. c. 43.

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Time to pro-
duce persons
entitled to
goods may be
given.

Materials to
be given to
person who
proves them
to be his, if
not to be
sold.

Power to
masters and
others to en-
ter houses of
workmen.

Same provis-
ions appli-
cable to
tools as to
materials.

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AS AFFECT-
ING WORK-
MEN, &c.

17 Geo. III.
c. 56.

Provisions
as to journeymen
dyers,
and parties
causing
them to com-
mit frauds.

second, 20s., and for every subsequent offence, 40s.: the party procuring this to be done, or offering any such articles to a journeyman, servant, or apprentice for that purpose, without the employer's consent, shall, for the first offence, forfeit, 5s., for the second, 20s., and for every subsequent offence the sum of £4; and failing payment on conviction he may be committed to prison for any period not exceeding one month.

The eighteenth section provides that the inhabitants of any parish wherein any of the aforesaid offences shall be committed, may be competent witnesses.

Power to
justice to
issue war-
rant.

By the nineteenth section power is given to the justice, upon a complaint or affirmation in the case being made in terms of the Act, to issue a warrant for the apprehension of any party charged with the commission of any of the said offences, and to hear and determine the same (*h*).

Appeal.

The twentieth section is devoted to the mode of appealing to Quarter Sessions, and to the punishment of the delinquent in case the Quarter Sessions confirm the conviction (*i*). The appeal must be intimated at the time, and a bond of caution lodged, otherwise the party convicted must undergo the punishment.

Form of con-
viction.

Section twenty-one provides a form of conviction applicable both to sentences under the Act 22 Geo. II. c. 27, and to the Act under consideration (*j*).

Proceedings
not to be
quashed for
want of form,
nor to be re-
moved by
certiorari to
Queen's
Bench.

By the twenty-second section it is declared that no proceedings taken under the Act 2 Geo. II. c. 27, or under the present Act, and no order touching or concerning any of the matters therein contained, shall be quashed for want of form, or be removed by *certiorari* to the Court of Queen's Bench (*k*).

(*h*) This section is superseded by the 30 & 31 Vict. c. 141.

(*i*) See the following cases upon the point of appeal, *R. v. Twyford*, 5 A. and E. 430; *R. v. Recorder of Bolton*, 2 D. and L. 510.

(*j*) See *R. v. Wilcock*, 7 Q. B. 317; *in re Boothroyd*, 15 M. and W. 1; 11 & 12 Vict. c. 43; 14 & 15 Vict. c. 93; 27 & 28 Vict. c. 53. The seals of the justices are not necessary in Scotland. *Mackenzie*; 2 Swinton, 152.

(*k*) This applies only to offences created for the first time by 22 Geo. II. c. 27, but not to those created by 12

Geo. I. c. 34, and extended to the silk and cotton trades by 22 Geo. II. c. 27, *R. v. Rogers*, 5 B. and Ad. 773. See also 6 & 7 Vict. c. 40; 11 & 12 Vict. c. 43; 14 & 15 Vict. c. 93; and 27 & 28 Vict. c. 53. This clause is unavailing to prevent *certiorari* or suspension where the justices have no jurisdiction, or exceed their powers. See cases referred to under 20 Geo. II. c. 27. Suspension was held competent though no appeal had been previously taken to the Quarter Sessions. Lord Meadowbank was of opinion that the twenty-second section did not apply to Scotland.

By the twenty-third section it is declared that nothing contained in the Act is to be construed as repealing any former law or laws then in force, for the punishment of any of the offences therein referred to, except so far as particularly expressed. The succeeding section refers to offences committed before July, 1777, with regard to which the Act is not to apply.

The twenty-fifth and last section limits the period within which actions may be brought or commenced against any person for anything done in pursuance of the Act. It is declared, in the first place, that all such actions must be brought in the county or place where the fact was committed, and that the defendants may plead the general issue, and give the Act and the special matter in evidence at the trial. If it shall appear that the fact alleged was done by the authority of the Act, or if the action is brought in any other county or place than where the fact was committed, then the jury is directed to find for the defendant; and upon such verdict, or if the plaintiff or plaintiffs become nonsuit, or discontinue the action after the defendant shall have appeared, or if upon demurrer, judgment shall be given against the plaintiff, the defendant shall recover *treble costs* (l).

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17 Geo. III. c. 56.
Former Acts not repealed, except in so far as expressly mentioned.
Limitation of actions for acts done in pursuance of this statute.

If plaintiff nonsuited to pay *treble costs*.

This Act, passed nearly one hundred years ago, although modified so far as England is concerned (m), is still in force in Scotland, but not in Ireland. Sections 8 and 19 are superseded by the Act 30 and 31 Vict. c. 141 (n). Its provisions are certainly of an exceedingly stringent and penal nature, and open to very grave objections. It looks as if, at the time of the passing of the Act, employers alone had the making of the laws regulating the obligations of their workmen. The provision that a party unsuccessful in an action brought on account of anything done to his hurt or prejudice under the Act, should be liable in *treble costs*, is simply monstrous. With the exception, perhaps, of certain Excise Acts, there is hardly one of a more penal nature upon the statute book. It actually places the workman in a

See cases of Yeaman, Gillies, Kennedy, Skinner, and Robertson, *supra*.

(l) Double and treble costs are abolished by 5 & 6 Vict. c. 97.

(m) The above Act, so far as relates to the woollen, cotton, flax, mohair, and silk manufactures, &c., is repealed by 6 & 7 Vict. c. 40, which see; but

this Act does not apply to Scotland nor to Ireland, so that both the 22 Geo. II. c. 27, and 17 Geo. III. c. 56, are in full force in Scotland, except in so far as sections 8 and 19 of the latter Act are superseded by the Master and Servant Act, 1867.

(n) 30 & 31 Vict. c. 31.

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AS AFFECT-
ING WORK-
MEN, &c.

17 Geo. III.
c. 56.

This Act
places work-
men in a
worse posi-
tion than
vilest crim-
inal.

worse position than that of the vilest criminal who is subject to the ordinary law of the country. It is a trite rule of criminal evidence that two witnesses are necessary to establish a crime, at all events the testimony of one, however credible, is not enough ; but by this Act, and for the express purpose of insuring an easy and comfortable conviction, the evidence of what is called one credible witness is declared to be sufficient. This may be a very convenient state of the law for public and private prosecutors, but it is certainly a very dangerous one for those who are accused. A workman is at the mercy of any party whom it may please some not very astute justice to consider a credible witness, who may be himself the very delinquent, if there is any delinquency at all ; yet if he has not been convicted of crime, or his character is not known to be bad, he may probably be considered to be a credible witness. The provision, too, as to a party's liability to conviction for being in possession of articles without being able to give the name of the person from whom they may have been purchased, even although, to use the words of the Act, "*no proof shall be given to whom such articles belong,*" seems utterly out of place in modern legislation. Many individuals purchase articles of clothing from travelling dealers who call at their houses, of whom they know absolutely nothing. Several of the other provisions are equally objectionable. The powers given to officers to apprehend suspected persons and to search houses, and the inducements held out to informers, seem to be excessive and unnecessary, and hold out a premium to tyranny and oppression. It can excite no surprise, therefore, that its provisions gave rise to considerable abuse, as may be seen from the case of a police officer, who appeared as an informer in several prosecutions under the Act, and who was tried on fourteen separate charges of extortion and oppression by threatening prosecutions against parties, and afterwards privately abandoning them on payment of money. He pleaded guilty to six of the charges, and was sentenced to nine months' imprisonment. Had he been a workman, and merely purloined a few ends of yarn oftener than once, he could have had hard labour and public whipping from the justices (o) as a punishment.

Such, then, are the stringent provisions of this Act, passed so

(o) Swinton's Criminal Reports, vol. ii. p. 479.

long ago as the year 1777, and which, as already stated, is still in force in Scotland, notwithstanding the improvements which have been made in other branches of our penal code, and the great advances of the working classes in a social and moral point of view. The law trawls mercilessly for small fry. We have no special nets for catching the larger fish. If we had an Embezzlement Act to suit the case of the fraudulent bankers, brokers, merchants, shipowners, manufacturers, directors, and others who swindle upon a large scale, and ruin families by scores, we could afford to look with some complacency upon the penal provisions of an Act passed to protect the thrums and bobbins of our grandfathers; and if the punishment of public whipping (only recently applied to garotters), which can still be inflicted upon the miserably underpaid wretch who appropriates a few hanks of thread or remnants of muslin, would be deemed too severe for distinguished rogues, we might at least for their special benefit revive the equally antiquated penalty of the pillory. But as great robberies seem to have been in all ages considered respectable, it will be long before the world will come to look upon them as being so deserving of punishment as a petty larceny. The pirate whom Cæsar so shabbily executed, according to Suetonius, for having kept him prisoner *prope quadraginta dies, cum uno medico et cubiculariis duobus* (p), might well have exclaimed, when accused of plundering, that he, Caius Julius, was the greater robber of the two. The difference of station, however, made the one a criminal and the other his judge.

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(p) "Nearly forty days, with a doctor and two valets."

CHAPTER IV.

THE LAWS AGAINST COMBINATIONS BY WORKMEN.

II. CRIMINAL
AS AFFECT-
ING WORK-
MEN, &c.

COMBINATIONS of workmen for the purpose of raising or maintaining the price of their labour were long held among the number of public crimes in this and other countries of Europe.

Combina-
tions of work-
men.

The existence of combinations of the character in question dates from a very early period. By a constitution of the Emperor Zeno, all monopolies and combinations to keep up the price of merchandise, provisions, or workmanship, were prohibited upon pain of forfeiture of goods and perpetual banishment (*a*). The earliest notice we have of them in England is in the reign of Edward I. (*b*); and from that time downwards until 1825, both the English and Scottish Parliaments attempted more or less to legislate upon the subject. The first general law regulating the wages to be received by different classes of labourers was passed in 1350 (*c*), after the great plague, by carrying off thousands of the labouring classes, had caused a scarcity of workmen. In Scotland several Acts were passed in the reign of James I. regulating the price of labour. Of these three, respectively intituled "Of the Fees of Craftesmen and the Price of their Worke," "Of the Fees of Workmen," and "Of Writches (*d*) and Masones," were passed in the fifth Parliament of that monarch (*e*). Another Act was passed in the seventh Parliament of the same king, intituled "The Price of ilk Workmanshippe" (*f*).

Famine and
pestilence in
1350.

It is a curious circumstance that the first general law passed both in England and France with regard to fixing the rate of wages should have been established in the same year (1350), and from the same causes, viz., the effects of famine and pestilence. Holinshed relates that in the year 1348 it rained every day and

(*a*) Cod. 4, 591.

(*b*) 33 Edward I.

(*c*) 23 & 25 Edward III.

(*d*) Wrights.

(*e*) 5 Parl. Jac. I.

(*f*) 7 Parl. Jac. I.

night from midsummer to Christmas, and that this extraordinary fall of rain was followed by a pestilence which extended over all Europe. During the following year "the people died wonderfully." The consequence, of course, was a great and exceptional demand for labour of all kinds, the value of which increased with great rapidity; and the agricultural labourer rose at once to a position which he had never attained before, and could make almost any terms he chose with those who were compelled to avail themselves of his services. But at this point the legislature stepped in between the parties, and passed the Act of 1350, known as the "Statute of Labourers," by which they fixed the rate of wages of all classes of labourers, both husbandmen and artizans, at which they were compelled to accept employment. In France this was accomplished by an "*Ordonnance concernant la police du royaume*," of date 30th January, 1350 (g). These enactments, however, although intended to protect employers, were also meant to do justice to the labourer. As has been already shown, the adjustment of wages both in England and Scotland was intrusted to justices of the peace, instead of being regulated by periodical Acts of Parliament; and their duty was to adapt the rate to the cost of the necessaries of life or the value of the currency. In Scotland there is still a remnant left of the old system of regulating the price of articles by judicial authority, called the *Fiars*. These are the prices of grain in the different counties, fixed by the sheriffs, respectively, in the month of February, with the assistance of juries. The jury being called, evidence is laid before them of the prices of the different grains raised in the county. The prices fixed by the opinion of the jury, and sanctioned by the sheriff, are termed the *fiars* of that year, and regulate the price of all grain stipulated to be sold at the *fiars* prices, and also the price of all grain, the produce of the county, where no price is mentioned. They also regulate the money value of that part of the stipends of parochial clergymen which is payable in grain. In France the regulation of wages was likewise effected by the machinery of local courts. From a comparative table of the rates of wages at the period in question with those of the present day, measured by the prices of the necessaries of life, it would appear that the rates of wages in England of the different classes of labourers were higher than they are

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ING WORK-
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Scarcity of
labour in
consequence.

Statute of
Labourers,
1350.

Similar en-
actments in
England and
France in
1350.

Regulation
of wages by
justices.

Fiars' prices
in Scotland.

Regulation
of wages in
France.

II. CRIMINAL AS AFFECTING WORKMEN, &c. now. The wages of reapers during harvest were fixed by the statute of 1350 at 3*d.* per day, a sum which is equal to 5*s.* per day, or 30*s.* per week, now. By statute 29 Henry VI. c. 12 (*h*), being about a century later, the sum was fixed at 5*d.*, being equal to 6*s.* 8*d.*, or £2 per week, now; and by the same enactment the wages of ordinary workmen in the building trade were fixed at 3½*d.* per day, equal to 4*s.* 8*d.* per day, or 28*s.* per week, at present (*i*).

Wages of reapers in England in 1350.

Restrictions upon labourers in England.

Regulations as to their clothing.

First mention of combinations.

Whether it was politic or not to interfere in the matter of adjusting rates of wages, is a question which it would be out of place to discuss here; but this intervention had at least the effect of preventing the general rate of wages from being reduced by competition beyond a certain standard. Not only was the remuneration to be paid to the labourer fixed by law (*j*), but apprenticeship formed the only title by which a man could follow a particular trade; the calling being embraced in early youth, and once chosen could never be altered (*k*), for those employed in husbandry, even until twelve years of age, were not afterwards permitted to leave their employment (*l*). This rule was analogous to that which obliged children in Scotland, who entered upon work as colliers, to continue at it all their lives, only it did not in England include the principle of astringency to any particular farm. Even the clothing of the mechanic and the peasant seems to have been as much looked after in those days as they are now in Russia. By the 37th of Edward III. the former was allowed to give two pounds for his piece of cloth, whilst the latter was condemned to wear "blanket and russet lawn." No servant was allowed to pass from one hundred to another (*m*).

The first mention of combinations of workmen appears to be made in two statutes of Edward VI. (*n*), in which it is stated "that artificers, handicraftsmen, and labourers have made confederacies and promises, and have sworn mutual oaths, not only that they should not meddle with one another's work, and perform and finish that another hath begun, but also to constitute and appoint how much work they shall do in a day, and what hours and times they shall work, contrary to the laws and statutes of this realm, and to the great hurt and impoverishment of his Majesty's

(*h*) 29 Henry VI. c. 12.

(*i*) Hallam, *State of Europe*, vol. iii. p. 454.

(*j*) 23 & 25 Edward III.

(*k*) 37 Edward III.

(*l*) 12 Richard II.

(*m*) 25 Henry VIII. c. 18.

(*n*) 2 & 3 Edward VI. c. 15.

subjects." The penalties were very severe; for instance, for a third offence a fine of forty pounds, sitting in the pillory, loss of an ear, and to be taken afterwards as a man "infamous" and not to be credited. This part of the Act was subsequently repealed (o). The 5th of Elizabeth, commonly known as the Statute of Apprentices, repealed all the then existing laws with regard to labour, and substituted other provisions for those which, as stated in the preamble, could not, "without the great grief and burden of the poor labourer and hired men, be put in good and due execution." It proceeds to state, "The wages and allowances limited and rated in many of the said statutes are in divers places too small, and not answerable to this time, respecting the amount and price of all things belonging to the said servants and labourers." The Act directs that no person shall be hired for less than a year; that all men shall be compellable to work, either at trade or husbandry, excepting gentlemen born; and the putting away a servant, and his testimonial, or regulated wages, are to be assessed by justices. The giving or receiving more than the amount assessed is forbidden, and the thirty-first section states that "it shall not be lawful for any person to exercise any art, mystery, or manual occupation now used in England and Wales unless he shall have been seven years apprentice to the same." The Act aims at discouraging rustics from becoming mechanics. Merchants are to receive no apprentices but those whose parents expend 40s. a year; and woollen weavers in Cumberland, Westmoreland, Lancashire, and Wales, can take no apprentices excepting the sons of freeholders of £3 per annum. The provisions of this Act were in force for two centuries and a half, and seem to anticipate some of the objects at which trades unions have since been aiming.

The influence, however, of corporations upon labour, although under the Stuarts several concessions were granted, gradually declined; and after the commencement of the reign of William and Mary it seems to have almost died out. The system of regulating wages by law also fell into desuetude, and the condition of every labouring class was given over to unrestricted competition. In abolishing the old system, the legislature seemed to think that the labourer was as able to take care of his own interests without combination as his employer, ignoring altogether

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ING WORK-
MEN, &c.

Penalties by
5 Eliz. c. 4.

Provisions of
Statute of
Apprentices,
5 Eliz. c. 4.

Regulation
of wages by
law fell into
desuetude.

(o) 5 Eliz. c. 4.

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ING WORK-
MEN, &c.

Workmen
forced to en-
gage in free
competition.

Only mode
by which
they could
protect
themselves
was by com-
bination.

Public law of
France as to
combina-
tions in 1689.

the dependent position of the labourer, and the continued increase of population, which always tends to keep up a supply of labour in excess of the demand for it. They thus forced workmen in every trade to engage in free competition, which, as a matter of course, left them almost entirely at the mercy of employers. The laws which prevented wages from being lowered beyond fixed rates being thus withdrawn, workmen were left to shift for themselves, and to meet their employers in an entirely new position. The only possible way in which they could protect themselves was by *combinations*; but it was precisely to prevent these that both in Great Britain and France the numerous laws which date from the period in question were passed.

The political as well as legal views of the question in Europe at the time are embodied in the public law of France, as laid down by Domat, writing in 1689. He states, in treating of Dearth, "It is necessary to distinguish from monopolies, another cause of dearth, which proceeds from a combination among those through whose hands any sort of goods or merchandise must pass before people can have the use of it, and who being, according to the order of the civil policy, the only persons of whom it can be bought, agree among themselves to raise the price of it." "It is on account of these abuses, which may be reckoned in the number of crimes, that the laws have made provision therein, in order to repress them and to keep these sorts of things at their just price. *Ne quis illicitis habitis conventionibus conjuret aut paciscatur ut species diversorum corporum negotiationis non minoris quam inter se statuerint venundetur*" (p). And again, "As there are monopolies of merchandise, so there are also monopolies in undertakings of mechanic works, if the undertakers to whom application is made combine together to insist, all of them, on a certain price, and engage not to do it at a cheaper rate; and this kind of monopoly is not less prohibited than that of merchandise, and the laws forbid and prevent, with greater reason, the combinations of undertakers who agree among themselves that none of them shall undertake either to begin or to continue a work which another of them had begun or undertaken to do."

(p) "That nobody by illegal agreements may combine with others not to sell different kinds of merchandise for

less than prices fixed among themselves." Domat, *Loi Publique*, b. i. t. 7, s. 4.

"It is likewise a consequence of this rule that it is prohibited to workmen to leave a work they have begun. *Provideat magnificentia tua ne quis redemptorum aut fabrorum aut ortificum opus a se inchoatum relinquat imperfectum, sed ut accepta mercede opus quod incepit perficere cogatur.* L. 12, s. 8, c. de æd priv." (q).

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Public law of France as to combinations in 1689.

Nearly the same language is held by Blackstone, writing at a much later period. He says, "Combinations also among victuallers or artificers to raise the price of provisions or any commodities, or the rate of labour, are in many cases punished by particular statutes" (r).

Statement of English law by Blackstone.

In the reign of George I. an Act was passed to prevent combinations of wool-combers (s); and by the 22 Geo. II. c. 27, to which reference has already been made (t), this Act was extended to every important branch of manufacture. As the law then stood, any one workman might refuse to work till he was paid the price he chose to name for his own labour; but if two or more entered into an engagement of this kind, such an association being held to be injurious to the interests of the public, they were considered to be guilty of a conspiracy, and could be punished by an indictment or an information (u). Combinations had become so frequent among workmen that it was thought expedient to repress them by a speedier process, and therefore the 40 George III. c. 106 (v), was passed, which enacted that any

12 Geo. I. c. 34; 22 Geo. II. c. 27.

One workman might refuse to work, but the combining of two or more held to be a conspiracy.

(q) "That your Majesty may provide that no workman or artificer may leave work unfinished which he has begun, and that, having accepted hire, he may be compelled to complete what he has commenced." Domat, b. i. t. 13, s. 2.

(r) Black., vol. iv. p. 159.

(s) 12 Geo. I. c. 34. See case of *R. v Vipont*, 2 Burr, 1163, where the court held that the conviction was clearly bad for want of any judgment of the forfeiture. The court said that a conviction was equal to a verdict and judgment, but that this was a verdict without a judgment.

(t) 22 Geo. II. c. 27, s. 12.

(u) 1 Leach., Hawk. 348. *R. v. Ridgway*, 1 D. & R. 132; 5 B. & A. 527.

(v) 40 Geo. III. c. 106. See under the statute 39 & 40 Geo. III. c. 106, the case of *R. v. Neild*, 6 East, 417. The statute prohibits under a penalty

all agreements by any journeyman or manufacturer for controlling any person carrying on any manufacture, &c., and giving a summary form of conviction, in which the offence requires to be stated. The defendants were convicted of having been unlawfully concerned in the making and entering into a certain agreement for the purpose of controlling W. B., a manufacturer, contrary to the form in the statute. It was urged against the conviction that the agreement ought itself to have been set forth in averment, that the court might judge whether it were an illegal agreement for the purpose of controlling the master manufacturers within the meaning of the Act of Parliament. The Court of King's Bench concurred in that argument, and quashed the conviction. "It is not enough," to use Lord Ellenborough's

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ING WORK-
MEN, &c.
40 Geo. III.
c. 106.

Workmen
combining
to advance
wages could
be imprison-
ed for three
months with
hard labour.

40 Geo. III.
c. 106.

Act also
applies to
case of any
workman
preventing
another
from hiring
himself.

person combining with others to advance their wages or decrease the quantity of work, or any way to affect or molest those who carried on any manufacture or trade in the conduct and management thereof, could be convicted before two justices of the peace, and be committed to the common gaol for any term not exceeding three calendar months, or be kept to hard labour in the house of correction for two months. The Act recites that "Contracts entered into for obtaining an advance of wages, for altering the usual time for working, or for decreasing the quantity of work (excepting such contract be made between a master and his journeymen), or preventing any persons employing whomsoever they may think proper in their trade, or for controlling the conduct or any way affecting any person or persons carrying on any manufacture or business in the conduct or management thereof, shall be declared null and void." The Act also struck at "Workmen combining to prevent any one from hiring himself, or prevailing upon him to quit his employment, or who shall hinder any master from employing any person, or without reasonable cause shall refuse to work with any other workman; and also all persons who shall attend meetings for the purpose of making such alleged contracts, or who shall endeavour to induce any journeymen to attend such meeting, or who shall collect money for such purpose."

The opinion of Lord Ellenborough, as expressed in the case of *R. v. Neild*, has been controverted by Lord C. J. Abbott in the

words, "that the agreement should be for the purpose of controlling—that is, with the intent to control; but it must be entered into *for* controlling—that is, for effecting that object; and the court cannot say that this was such an agreement without seeing what it was."

Two cases were much relied on in support of this conviction, viz., first, that of *R. v. Fuller*, upon an indictment founded on 37 Geo. III. c. 70, which makes it an offence to *endeavour* to seduce soldiers from their duty: in that case it was held not to be necessary in an indictment for such an offence upon that statute to set out the means by which the endeavour was to be effected, 1 Bos. & Pull. 180; and second, the case of *R. v. Moors* and others, 6 East, 419, note (b), where, in

an indictment on 37 Geo. III. c. 123, against administering unlawful oaths, it was holden not to be necessary to set out the oath itself. The latter of these cases at first occasioned some doubt in the minds of the judges when called upon to decide in *R. v. Neild*; but, after deliberation, they remained satisfied that it turned upon the particular wording of the 37 Geo. III. c. 123, and did not affect the question then before them. With regard to the former case, *R. v. Fuller*, if it be not allowed to consider it as anomalous, yet after the case of *R. v. Neild*, and as explained by Lord Ellenborough on that occasion, it cannot be deemed a safe precedent beyond the particular Act to which it applies. See also *R. v. Nott*, 4 Q. B. 768. Paley on Sum. Con. p. 214. (5th ed.)

subsequent case of *R. v. Ridgway* (*w*), where it was held that a conviction for *attending a meeting* "for the purpose" of carrying on a combination for the purpose of obtaining an advance of wages, correctly described the offence by the words "for the purpose," although the description of offence referred to in the fourth section, on which the conviction took place, was described in the third section of the statute to be "any combination to obtain;" and that the words "for the purpose of obtaining" and "to obtain" were synonymous. In that case Abbott, C. J., said—"There is no man who entertains a greater reverence for everything that fell from my Lord Ellenborough sitting in this place than I do. I cannot, however, help saying that the observation made by him in *R. v. Neild* (and which certainly was not the foundation of the decision there), is not satisfactory to my mind. My Lord Ellenborough appears there to have affirmed that the words '*for the purpose of controlling*' following the word '*agreement*,' is not a sufficient allegation to show that the agreement was *for controlling*—that is, for effecting the illegal object—and, therefore, in that view of the case it occurred to his mind at that time that the expression used on that occasion was not equivalent to the language of the Act of Parliament; but on looking to the Act of Parliament I think the legislature itself has told us that a combination *to obtain* an advance of wages is an agreement *to do it*. The third section says, 'that every journeyman, &c., who shall enter into any combination *to obtain* an advance of wages or for *any other purpose* contrary to the provisions of this Act, shall,' &c. Now a combination '*to obtain*' is a combination '*for the purpose*' of obtaining. They are convertible terms, and it is the same as a combination '*for the purpose*.' The words '*for the purpose*' show in what sense the legislature has used the word '*purpose*.' It is used not in the sense of '*intention*,' but '*object and intention*.' In the fourth section the words are, 'all persons who shall attend any meeting had or held *for the purpose* of making any contract, covenant, or agreement *by this Act declared to be illegal*, or of entering into any combination *for any purpose declared by this Act to be illegal*,' &c. Here again we must intend that the word '*purpose*' means the '*object*' of the combination, and not the '*intention*.'

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AS AFFECT-
ING WORK-
MEN, &c.
40 Geo. III.
c. 106.

Opinion of
Chief Justice
Abbott in *R.
v. Ridgway*

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AS AFFECT-
ING WORK-
MEN, &c.

40 Geo. III.
c. 106.

Opinion of
Bayley, J.

Combina-
tions of
masters for-
bidden by
39 and 40
Geo. III. c.
106.

41 Geo. III.
c. 38.

R v.
Hazzell.

The defendant has been convicted of attending a meeting held 'for the purpose' of obtaining an advance of wages, and therefore he comes within the terms of the statute." Bayley, J., said—"R. v. Neild is not an authority in the present case; the objection to the conviction there was that the agreement was not set out, and therefore that the alleged offence was not described at all. I agree with the dictum in Hawkins (x), that any words which do not sufficiently describe the offence will not do; but a variation from the precise words of the statute, in my opinion, is not fatal if the words used are such as bring the case within the plain meaning of the Act of Parliament."

The 39 & 40 Geo. III. c. 106, also contained enactments intended for the relief of the labourer, by one of which combinations of masters are forbidden; two relate to arbitrations in disputes between employers and employed: both, however, were of very little use.

The Act 41 Geo. III. c. 38 (y), was also passed with the view still further of repressing combinations. It continued to be acted upon until repealed by the 5 Geo. IV. c. 95 (z), which was itself repealed by the 6 Geo. IV. c. 129 (a). The Act 41 Geo. III. gives a general form for the conviction, in which it is merely required to state the offence, without anything pointing to the date or place. In a case which was brought under it the offence was in substance stated in the following manner, viz.:—"That the defendant, on a certain day (he being then employed by G. S. & Co., of Wallington, in the county before mentioned, in the trade of a calico printer, carried on by them at Wallington aforesaid), and whilst he was such workman and so employed as aforesaid, refused to work with one S. B., then also employed by G. S. & Co., in the same manufacture, carried on by them at Wallington aforesaid." This conviction was quashed because it was not expressly averred *where* the refusal was given, so that it did not appear to be within the jurisdiction of the magistrate. Lord Ellenborough, in delivering the judgment, observed that the words *then* and *there* were

(x) Hawk. P. C. 611, c. 25, s. 110, 8th edition, by Curwood, where it is laid down that unless the statute be recited, neither the words *contra formam statuti*, nor any periphrasis, intendment, or conclusion, will make good an indictment which does not bring the

offence within all the material words of the statute. Paley on Sum. Con. 5th ed. pp. 214, 215.

(y) 41 Geo. III. c. 38.

(z) 5 Geo. IV. c. 95. See 1 Deac. Crim. L. 253.

(a) 6 Geo. IV. c. 129.

not to be exploded altogether, and they have sometimes more meaning than was commonly imagined (*b*).

The justices of the peace have long ceased to determine the rate of wages between employers and employed. The 53 Geo. III. c. 40 (*c*), enacted that their powers "in rating wages, or settling or fixing prices of work to be done or performed, shall be void." The Act of 1800, together with that passed in the following year (40 Geo. III. c. 90) (*d*), relating to arbitration, may be looked upon as the last great attempt to regulate labour by statute. The consequences of the legislature having taken away the only protection which the labourer had against the reduction of his wages, and at the same time prohibiting him from taking such steps as could alone secure him against the effects of free competition in labour, produced that bitterly hostile feeling which for so many years existed between employers and employed, as well as that misery in the condition of the working man which led him to commit excesses, the consequences of which his best friends have never ceased to deplore.

The calico printers complained of their hardships to Parliament in 1804, 1805, and a committee was appointed to make inquiries into the nature of their complaints; but although evidence was taken, no report was made. A bill was, however, introduced, proposing among other things to lessen the number of apprentices. The unions seem to have been at that time sufficiently formidable to cause uneasiness to the manufacturers; and Sir Robert Peel (grandfather of the present baronet) stated in the debate on 28th April, 1807, "that there were many men of property who seriously thought of moving themselves and their capital to some other country where their property would be better protected." This cry has been repeatedly raised since, and is now one of almost daily occurrence. Whether it was one which was at that time justified by the state of the relations between masters and workmen does not appear; but at all events the resolution hinted at was not put into practice by the threatened withdrawal from the country, and in any view the threat was employed to maintain an iniquitous state of the law. This is evident from the provisions of the last statute to which we have referred, viz., 39 & 40 Geo. III. c. 106. After declaring all combinations to

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AS APPEALING
ING WORK-
MEN, &c.

53 Geo. III.
c. 40.

Complaints
of calico
printers in
1804.

Statement of
Sir Robert
Peel.

(*b*) *R. v. Hazell*, 13 East, 142; and
see *Johnson v. Reid*, 6 M. and W. 122.

(*c*) 53 Geo. III. c. 40.
(*d*) 40 Geo. III. c. 90.

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AS AFFECT-
ING WORK-
MEN, &c.

Powers con-
ferred on
justices of
the peace to
convict,
under 39 and
40 Geo. III.
c. 106, on the
oath of *one*
credible
witness.

obtain an advance of wages to be unlawful, it goes on to enact that "any workman who entered into a combination, either verbal or in writing, to obtain an advance of wages, to lessen the hours of time of working, to decrease the quantity of work, to *persuade*, intimidate, or (by money or otherwise) endeavour to prevail on any other workmen not to accept employment; or who should, for the purpose of obtaining an advance of wages, endeavour to intimidate or prevail upon any person employing him; or who, being hired, should without any just or reasonable cause refuse to work with any other workman—such workman should on the oath or oaths of *one* or more creditable witnesses before any two justices of the peace, within three calendar months after the offence has been committed, be committed to and confined in the common jail within their jurisdiction for any time not exceeding three calendar months, or at the discretion of such justices should be committed to some house of correction within the same jurisdiction, there to remain and be kept to hard labour for any time not exceeding two calendar months."

Severity of
this enact-
ment.

A recent author, by no means biased in favour of the workman, in writing upon this Act remarks, and we fully concur with him in what he says—"The extreme severity of this enactment must strike even the most earnest advocate of repressive legislation, for justices of the peace belonged to the order of masters, and however respectable individually, generally possessed a full share of the feelings and prejudices of that class. To invest, therefore, two of these justices with the power of imprisoning workmen for three months without the intervention of a jury, was certainly intrusting them with an authority very liable to be abused, and which, if it ought to be exercised at all, should be placed in the hands of persons less likely to act under a bias. True, the workmen could appeal to the Quarter Sessions; but that was only an appeal from one set of justices to another, and, therefore, could be of little benefit to the working man" (e). Another writer in one of our Reviews, who is likewise free from any leaning to the working classes, states—"It cannot be denied that in the whole course of the legislation against 'combinations' the sympathies of the legislature were for the most part with the employers, and the fact must be borne in mind when attention is turned to the excesses and fallacies that have accompanied the

Sympathies
of the legis-
lature for
employers.

(e) Ward on Workmen and Wages. London, 1868.

assertion of their rights by workmen in these recent years of new found freedom. As Adam Smith shrewdly remarks—‘ Whenever the legislature attempted to regulate the differences between masters and workmen, its counsellors were always the masters.’ ”

“Combinations on the part of the masters,” the same writer remarks; “were authorized, or at least not prohibited, by law. It was the combinations of workmen only that fell under the lash. Against workmen convictions for breaking the laws were taking place constantly, but there is no record of any convictions against an employer.” “We know how difficult it is to get rid of traditional feelings even when the occasion for them has disappeared. For nearly five hundred years, with but little interruption, a traditional sense of hard usage in respect of their relation to their employers has been working into the soul of the labouring class. To eradicate that feeling it would be reasonable, we apprehend, to allot a period not less than the three generations said to be required for purifying the blood.”

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AS AFFECT-
ING WORK-
MEN, &c.

Observa-
tions of
Adam
Smith.

We trust considerably less time than that here spoken of will suffice to effect a thorough understanding between employers and employed. The faults are not by any means all on the side of the masters, although, doubtless, the workmen have suffered most and longest. If, however, the law was against them, and in favour of their employers, it did not the less prevent them from gratifying their revenge, at least in lampoons, as in the celebrated case of the strike of the Sheffield cutlers against the “extortionate practice” of making *thirteen* knives to the dozen, commonly called the “devil’s dozen.” An employer who had become particularly obnoxious to the men on this account was thus apostrophized—

Strike of
Sheffield
cutlers.

“Then may the *odd* knife his great carcase dissect,
Lay open his vitals for men to inspect
A heart full as black as the infernal gulf,
In that greedy, blood-sucking, bone-scraping wolf.”

It would have been well had retaliation been carried no further than this wordy warfare; but the weapon was ominous. As a general rule, it is said that “there’s luck in *odd* numbers,” but thirteen forms an exception—so in this case it became really war *to the knife*, as we all know, and with most lamentable consequences.

The state of the law in France previous to the Revolution was much the same as in England, but in this respect the French

Combinations
in France.

II. CRIMINAL
AS AFFECT-
ING WORK-
MEN, &c.

Code Pénal.

law was not mitigated after the promulgation of the *Code Napoléon*; in fact, combinations were dealt with more severely, but at the same time with an appearance of providing more justly for both masters and workmen, than under the old regime. By the 414th article of the *Code Pénal*, it is ordained that "Every combination among those who employ workmen tending unjustly to lower wages, followed by any attempt or putting in execution, will be punished with imprisonment for any period from six days to a month, and a penalty of from 200 to 300 francs." The 415th article provides that "Every contravention on the part of workmen for the purpose of stopping work, to hinder others from working in a workshop, or to repair or remain there before or after certain hours, and, in general, to suspend, hinder, or raise the value of labour, if there has been any attempt or commencement of execution, will be punished with imprisonment from one to three months." The 416th article provides that "Those workmen who shall have imposed fines or other penalties upon any masters or directors of workshops, or upon other workmen, will be subjected to the same punishment as in the preceding article; and those who shall be found to be the leaders in the matters referred to therein will, in addition to the foregoing punishment, be subject to the surveillance of the police for a period not less than two and not more than five years."

Decree of
3rd August,
1810.

By the terms of the 4th article of the decree of 3d August, 1810, the *Prud'hommes* were directed to endeavour to check at once all acts tending to disturb the order and discipline of the workshops, so as to prevent, if possible, combinations either on the part of masters or workmen. By the 10th article they were likewise charged to draw up a report upon any contravention of the articles of the *Code Pénal*; but their chief energies were directed to paralyze any such combination in the birth, and by judicious remonstrances and persuasions to bring both parties to reason, and in this object they were generally successful.

Change in
the law both
of Great
Britain and
France.

But a change was to take place both in Great Britain and France with regard to the penal laws as to combinations, as it began to be felt, at the periods referred to, that such enactments only stimulated the evil they were meant to cure. These were the disgraceful days when, as men not very old remember, "vitriol used to be dashed into the faces of obnoxious workmen; when men at the point of death were brought into court on

stretchers to identify the villain who had shot them; when clothes almost burnt to a cinder were produced to show what vitriol had done; when even young women were blinded for life for going against the rules of the union; and when actual occurrences such as these gave a dread significance to threatening letters from the 'Captain of the Vitriol Forces,' dated from 'Nine Miles Below Hell,' and to the rough representations of pierced hearts, coffins, pistols, death's heads and cross bones that embellished them." Such days, we trust, have passed away for ever, and we would fain look upon the late disclosures at Sheffield as the last lingering remains of a fierce and brutal nature now all but extinguished.

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AS AFFECT-
ING WORK-
MEN, &c.

It is difficult for the present generation to realize the terrorism of those evil days, which, in this country at least, happily ended with the cotton-spinners' trial at Edinburgh, January, 1838, upwards of thirty years ago. The memory of that *cause célèbre*, in which the late Sheriff Sir Archibald Alison and his justly esteemed successor, Sheriff Bell, were engaged, but on different sides (these two able men not then rowing in the boat in which they afterwards pulled so well together) is embalmed in one of the most eloquent forensic speeches of modern times, delivered by Sheriff Alison in reply to an address by Lord Medwyn to the sheriffs at the close of the winter circuit of 1838 in Glasgow. It would be a pity should that speech be lost to posterity, and we therefore hope that it will be found in Sir Archibald's collected writings. It is well worthy of being read and considered by working men at the present time, as showing the length to which perverted principles led men not probably otherwise worse than many of a similar class in our day. (*Vide Appendix, p. 299.*)

Cotton-spin-
ners' trial in
1838.

Previous to the final abolition of the combination laws in 1825, several cases had occurred in Scotland in which the point was debated whether mere combination to raise wages and abstain from working was a criminal offence. It was, of course, never doubted that it was so when attended with threats or violence. The question was raised in the case of the papermakers in 1808, and a majority of the Court of Justiciary found against the relevancy of an indictment for simple combination. A similar judgment was given in the case of the shoemakers in 1811, but in less decisive terms. At last, in the case of the cotton weavers in 1813, combination was first found to be a point of "dittay," and

II. CRIMINAL
AS APPLIC-
ING WORK-
MEN, &c.

was punished by imprisonment. The same judgment was given in the case of the colliers in 1818.* It had been found in England that journeymen confederating and refusing to work unless for certain wages might be indicted for a conspiracy, although the statutes which regulated their work and wages did not direct this mode of punishment, as the offence consisted in the *conspiring* and not in the *refusal*, and all conspiracies are illegal, although the subject matter of them may be lawful (*f*). The sounder and more logical principle, however, that workmen's labour was to be looked upon as a commodity, gradually made way, and it was deemed best to allow its price to be determined by free competition. Consequently the laws which empowered justices to fix, and to punish workmen for combining to raise, wages and determine the hours of labour, were abolished.

* See Hume Comm., vol. i. pp. 494-6.
for this and two preceding cases. 2
Swin., p. 1., for cotton-spinners' trial.

(*f*) Journeymen tailors of Cam-
bridge, 8 Mod. 11.

CHAPTER V.

I.—CIVIL LEGISLATION AFFECTING MASTERS PRIOR TO 1824.

A GOOD many Acts were passed previous to the above period with regard to preventing and punishing the seduction and enticing of artificers and workmen, colliers, and others, to go into foreign parts, such as 5 Geo. I. c. 27; 23 Geo. II. c. 13; 22 Geo. III. c. 60; 25 Geo. III. (1) in part; 25 Geo. III. c. 67, in part; and 39 Geo. III. c. 56 (a); but these applied to no special parties, and were all repealed upon 21st June, 1824. It is, therefore, unnecessary to refer to them further here.

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AFFECTING
MASTERS.

Seduction of
workmen
and arti-
ficers.

By the Act 12 Geo. I. c. 34 (b), intituled "An Act to prevent unlawful combinations of workmen employed in the woollen manufactures, and for better payment of their wages," masters were prohibited from paying the wages of workmen by way of truck. It is declared by that Act that every clothier, sergemaker, or woollen or worsted stuffmaker, or person concerned in making any woollen cloths, serges, or stuffs, or concerned in employing woolcombers, weavers, or other labourers in the woollen manufactory, shall pay to all persons by them employed in the woollen manufacture the full wages, or other price agreed on, in good and lawful money of this kingdom; and shall not pay the said wages or other price agreed on, or any part thereof, in goods or by way of truck, or in any other manner than in money, or make any deduction from such wages or price for, or on account of, any goods sold or delivered previous to such agreement by any person or persons whatsoever."

12 Geo. I. c.
34, prohibit-
ing payment
of wages by
truck.

With regard to the recovery of the wages, it is provided that "any two or more justices of the peace, within their respective

Recovery of
wages by
workmen.

(a) 5 Geo. I. c. 27; 23 Geo. II. c. 13; 22 Geo. III. c. 60; 25 Geo. III. (1) in part; 25 Geo. III. c. 67, in part; 39 Geo. III. c. 56.

Note.—These Acts were repealed by 5 Geo. IV. c. 97, passed 21st June, 1824.

(b) 12 Geo. I. c. 34. This Act is not noticed in the schedule annexed to the Master and Servant Act, 1867, but is superseded, being repealed by 1 & 2 Will. IV. c. 36. *Vide* 1 & 2 Will. IV. c. 37, which is now the ruling statute.

III. CIVIL AS
AFFECTING
MASTERS.

13 Geo. I. c.

34.

Master
might be
imprisoned
for six
months on
failure of
payment
of wages or
of sufficient
distress.

jurisdictions, are authorized and required, upon complaint made for that purpose, to summon before them the party or parties offending, and for non-payment of such wages or price agreed on in money as aforesaid, or sufficient satisfaction given for the same to the good liking of the party or parties aggrieved, to issue their warrant or warrants under their hands and seals for levying such wages or price due as aforesaid by distress and sale of the offender's goods and chattels, rendering the overplus to the owner; and for want of sufficient distress to commit the party or parties offending to the common jail of the county, city, town, or place where such offence shall be committed, there to remain without bail or main-prize for the space of six months, or until he, she, or they shall pay such wages or price agreed on in money as aforesaid, or give full satisfaction for the payment of the same to the good liking of the party aggrieved."

Forfeiture
£10 on party
offending.

Besides the above provision, there is also an enactment to the effect that any party "so offending shall also forfeit and pay the sum of £10, one moiety thereof to the informer, and the other moiety to the party aggrieved," to be recovered as above-mentioned (c).

In treating of civil legislation as affecting workmen, servants, and apprentices, we had occasion to notice the Acts 32 Geo. III. c. 57.(d), and 33 Geo. III. c. 65 (e). It will be recollected that by the 3rd section of the 20 Geo. II. c. 19 (f) power was given to justices, upon complaint by "any apprentice *put out by the*

(c) See case of *H. Monteith & Co.* (Scottish), 2nd February, 1832, 5 S. D. 280. The wages of workers in a cotton mill were always paid in money, and the servants purchased of their own accord at a store kept by the company, where they had credit to a certain extent. A worker when dismissed had £5 2s. 10d. of wages due to him, and he was due the store for furnishings £4 0s. 2d. The latter was sought to be set off against his wages. Pleaded that the Act was only applied to payment of wages in commodities, or deduction of prior furnishings, but did not prevent the worker purchasing at the company's store after the payment was made. The court decided for the worker, and against the set off. Any doubt, however, which may have

existed upon this point is removed by the 5th and 6th sections of the present Act 1 & 2 Will. IV. c. 37. It has been held in England that deduction for room rent, use of frame, and other payments in connection with the work, do not fall within the Act. *Chauner*, 8 Q. B. 311. There is an able Report by Mr. John Hill Burton, advocate, on arrestment of wages (1854), in which he notices the operation of this Act.

(d) 32 Geo. III. c. 57. This Act is not included in the schedule annexed to the Master and Servant Act, 1867.

(e) 33 Geo. III. c. 55. The sections of this Act affected by the Master and Servant Act are 1 and 2.

(f) 20 Geo. II. c. 19. Extended to £10 by 33 Geo. III. c. 55, and to £25 by 4 Geo. IV. c. 29.

parish, or any other apprentice upon whose binding out no *larger* a sum *than five pounds* of lawful British money was paid," with regard to any misuse, refusal of necessary provisions, or cruelty, to summon the master, and upon satisfactory proof of the complaint, to discharge the apprentice. This was all the penalty imposed by the framers of this Act for the inhumanity implied by the very nature of the provisions referred to. We have seen that the punishment of the apprentices for misconduct was whipping, imprisonment, and hard labour. They seem, however, to have become rather more alive, in the reign of George III., to the fact that even parish apprentices, and such as could not afford *more* than £5 for their binding out, required some greater protection than this against the acts of brutally inclined masters; and accordingly, by the 11th section of the Act 32 Geo. III. c. 57, the justices are empowered to order the apprentice's clothes to be given up, and the master to pay a sum not exceeding £10 for placing the apprentice out again; and by section 12, when such master is liable to take another parish apprentice, he may be fined £10 instead.

III. CIVIL AS AFFECTING MASTERS.

32 Geo. III. c. 57. Justices could order master to give up clothes of apprentice and to pay £10.

By 33 Geo. III. c. 55, the master might also be fined to an extent not exceeding 40s.; and by 4 Geo. IV. c. 29, justices discharging an apprentice may order all or any part of the premium paid with him to be refunded. This latter Act is declared to extend to all apprentices upon whose binding out no larger a sum than £25 has been paid.

33 Geo. III. c. 55. Justices might order premium to be refunded.

The legislature does not seem to have interfered much with the internal economy of mills and factories during the period over which we are now proceeding; but in 1802 an Act was passed which may be regarded as the parent of the numerous Factory Acts which now appear upon the statute book. It is intitled "An Act for the preservation of the health and morals of apprentices and others employed in cotton and other mills, and cotton and other factories" (g). It proceeds upon the preamble that it had become a practice in cotton and woollen mills, and cotton and woollen factories, to employ a great number of male and female apprentices and other persons in the same building, in consequence of which certain regulations had become necessary to preserve the health and morals of such apprentices and other persons. It was therefore

42 Geo. III. c. 73.

Obligations on masters with regard to apprentices in cotton and woollen mills.

III. CIVIL AS
APPROKTING
MATTERS.

42 Geo. III.
c. 73.

Mills with
twenty or
more persons
subject to
certain
rules.

Rooms and
apartments
to be washed
with lime.

Apprentices
to be suppli-
ed with
clothing.

Working
hours
restricted to
twelve.

Apprentices
to be in-
structed.

enacted that from and after the 2nd December, 1802, all such mills and factories within Great Britain and Ireland, wherein three or more apprentices or twenty or more other persons were at any time employed, should be subject to the several rules and regulations contained in the Act; and the master or mistress of every such mill or factory is strictly enjoined and required to pay due attention to, and to act in strict conformity to, the said rules and regulations.

It is provided, in the second section, that all the rooms and apartments in the mill shall be washed with quicklime and water at least twice in each year (*h*), and that due care and attention shall be paid by the master or mistress to provide a sufficient number of windows and openings to insure a proper supply of fresh air.

The third section is in the following terms:—"And be it further enacted, that every such master or mistress shall *constantly* supply every apprentice during the term of his or her apprenticeship with two whole and complete suits of cloathing, with suitable linen, stockings, hats, and shoes—one new complete suit being delivered to each such apprentice once at least in every year."

By the fourth section the hours of working of such apprentices are restricted to twelve hours, reckoning from six o'clock in the morning till nine o'clock at night, "exclusive of the time that may be occupied by such apprentice in eating the necessary meals." It was provided that after 1st June, 1803, no apprentice should be employed or compelled to work between nine o'clock at night and six o'clock in the morning. It was provided, however, by the fifth section, that in mills and factories wherein a certain number of spindles were used, apprentices might be employed in the night until certain periods (*i*).

It is provided by the sixth section that apprentices are to be instructed every working day, for the first four years of his apprenticeship, in reading, writing, and arithmetic, "by some discreet and proper person to be provided by the master or mistress of such apprentice." The time occupied by this instruction was to be within the hours allotted for working.

The seventh section provides "That the room or apartment in

(*h*) See 3 & 4 Will. IV. c. 103, s. 26; 7 & 8 Vict. c. 15, ss. 18 and 58. c. 29; 10 & 11 Vict. c. 29. *Ryder v. Mills*, 3 Exch. 853. 13 & 14 Vict. c.

(*i*) See as to time, 3 & 4 Will. IV. c. 103; 7 & 8 Vict. c. 15; 8 & 9 Vict. 54; 16 & 17 Vict. c. 104.

which any male apprentice shall sleep, shall be entirely separate and distinct from the room or apartment in which any female apprentice shall sleep, and that not more than two apprentices shall in any case sleep in one bed."

III. CIVIL AS AFFECTING MASTERS.

43 Geo. III. c. 78.

Male and female apartments to be separate.

Provisions as to religious instruction.

The eighth section provides for the religious instruction of the apprentices. Masters and mistresses are enjoined to send them, at least once a month, to attend divine service in the church of the parish or place in which the mill or factory may be situated, or in some other convenient church or chapel; and in case they cannot conveniently attend such church or chapel, then the master or mistress, by themselves or others, shall cause divine service to be performed in some convenient place in or adjoining the factory.

It is provided by the ninth section, that justices of the peace, at their midsummer sessions yearly, shall appoint two visitors of such mills or factories, who shall report the condition thereof to the Quarter Sessions (j).

Justices to appoint visitors.

In case of infectious disorders prevailing, power was given to the visitors to require the master or mistress to call in forthwith some physician or other competent medical person, for the purpose of ascertaining the nature and probable effects of such disorder, and for applying such remedies and recommending such regulations as he should think most proper for preventing the spreading of the infection and for restoring the health of the sick, the expense to be borne by the millowner.

Provisions as to infectious disorders.

The eleventh and twelfth sections relate to the penalty for obstructing the visitors, and to a regulation as to affixing copies of the Act in conspicuous places of the mills or factories. The penalty is any sum not exceeding £10 nor less than £5 (k).

Penalties for obstructing visitors.

The thirteenth section limits the penalties upon masters and mistresses for a contravention of the Act, to a forfeiture of any sum not exceeding £5 nor less than 40s. There is nothing said about first, second, or subsequent offences.

Limitation of penalties.

By the fifteenth section the penalties are made recoverable by distress and sale; and failing such distress being found, a warrant could be issued by the justice for the imprisonment of the party convicted for any period not exceeding two calendar

Penalties recoverable by distress, failing which imprisonment not exceeding two calendar months.

(j) See 3 & 4 Will. IV. c. 103, ss. 17, 27, and 32.

(k) 7 & 8 Vict. c. 15, ss. 28 and 61; 8 & 9 Vict. c. 29, ss. 29, 41, and 42.

III. CIVIL AS AFFECTING MASTERS. months. No distress could follow for six days after conviction, nor until an order had been made for payment.

32 Geo. III. c. 57. Previous to the passing of the above Act, the regulation of parish apprentices had occupied the attention of the legislature, and the Act 32 Geo. III. c. 57 (*l*), had been passed upon this subject. In 1816 this Act was supplemented by another, intituled 56 Geo. III. c. 139. "An Act to regulate the binding of parish apprentices" (*m*).

Children not to be bound until they had attained nine years of age. By the latter Act children were not to be bound until they had attained nine years of age. The penalty on discharging apprentices, without consent of the justices, was a forfeiture of any sum not exceeding £10; failing payment, imprisonment could follow for any period not less than one nor more than six months.

II.—CRIMINAL LEGISLATION AFFECTING MASTERS.

IV. CRIMINAL AS AFFECTING MASTERS. The instances in which the force of the statutory criminal law was brought to bear upon masters and mistresses during the period in question, are very rare. An example, however, is furnished by the eleventh section of the Act 32 Geo. III. c. 57. It could hardly, however, have been much milder. This section enacts—"And whereas, by an Act passed in the twentieth year of King George II. (*o*), intituled 'An Act for the better adjusting and more easy recovery of the wages of certain servants, and for the better regulation of such servants, and of certain apprentices,' it is enacted 'That it shall and may be lawful to and for any two or more justices, upon any complaint or application by any apprentice put out by the parish, touching or concerning any misuse, refusal of necessary provisions, cruelty or other ill treatment of or towards such apprentice by his or her master or mistress, and due proof thereof (*p*), to *discharge such apprentice* from his or her apprenticeship;' and whereas instances of such ill treatment frequently occur, and it is fit that the *expectation* of such discharge should not operate as an *inducement* to such ill treatment: Be it enacted, that in every case where any parish apprentice whatsoever shall be discharged from

Provisions with regard to cruelty or ill treatment by masters.

(*l*) 32 Geo. III. c. 57.

(*m*) 56 Geo. III. c. 139.

(*n*) 32 Geo. III. c. 57.

(*o*) 20 Geo. II. c. 19.

(*p*) One would naturally have expected that "on due proof thereof,"

something was to follow against the master or mistress in the shape of a *direct* criminal prosecution. It is not so, however; the acts referred to are not even made statutory offences.

his apprenticeship by two justices, under and by virtue of the said last mentioned Act, it shall and may be lawful for such two justices to order such master or mistress to deliver up to such apprentice his or her clothes and wearing apparel, and also to pay to such churchwardens or overseers of the poor of the parish or place to which such apprentice shall belong, some or one of them, a sum not exceeding ten pounds, to be applied by them, some or one of them, under the order of such justices, for the again placing and binding out such apprentice so discharged as aforesaid, or otherwise for his or her benefit as to such justices shall seem meet; and also to pay a sum not exceeding five pounds in case such master or mistress shall refuse to deliver up such clothes and wearing apparel; and in case such master or mistress shall refuse to pay the sum so ordered by the said justices to be paid as aforesaid, or either of them, or any part thereof, it shall and may be lawful for such two justices, by warrant under their hands and seals, to levy the same by distress and sale of the goods and chattels of such master or mistress, together with the reasonable expenses of such distress; *and also, that it shall and may be lawful for such two justices, if they shall so think fit, to compel such churchwardens and overseers of the poor, some or one of them, to enter into a recognizance for the effectual prosecution by indictment of such master or mistress, for such ill treatment of any such apprentice so discharged as aforesaid, and also to order that the costs and expenses of such prosecutions shall be paid and discharged or reimbursed to such person or persons entering into such recognizance as aforesaid, one moiety thereof out of the poor rates of the parish or place to which such apprentice shall belong, and the other moiety thereof out of the common stock of the county in which such parish or place shall lie; and in case the churchwardens or overseers of the poor of such parish or place for the time being shall refuse to pay such, their moiety as aforesaid, it shall and may be lawful for such two justices, by warrant under their hands and seals, to levy the same by distress and sale of the goods and chattels of such churchwardens and overseers of the poor, any or either of them, together with the reasonable expenses of such distress.*"

IV. CRIMINAL AS AFFECTING MASTERS.
32 Geo. III. c. 57.
Masters to deliver up clothes.

Masters also to pay sum not exceeding £10.

On refusal, same may be levied by distress.

Justices might compel churchwardens to prosecute.

Provisions as to payment of costs.

The twelfth section, upon the preamble "that it is not expedient that such master or mistress should be again intrusted with the care of another parish apprentice," enacts that in every case

IV. CRIMINAL AS AFFECTING MASTERS.
32 Geo. III. c. 57.
Suchmasters not to be again intrusted with care of apprentices.

Consequences of their having been found guilty of cruelty.

Unsatisfactory nature of provisions of this Act.

where any parish apprentice shall have been so discharged from any master or mistress, under and by virtue of the said last mentioned Act, and such master or mistress shall have been convicted of such offence in consequence of such prosecution by indictment as aforesaid, or shall have been found guilty thereof in any action brought at the suit of the party injured, the churchwardens, instead of binding another apprentice upon such person, when he or she might be compellable to take one, may apply to any two justices of the peace to order such master or mistress to pay into the hands of the churchwardens any sum not more than £10, and not less than £5, to be recovered by distress and sale of the goods and chattels of such person.

Anything more roundabout or unsatisfactory than this mode of dealing with cruelty to such an apprentice, even though

“He's only a pauper whom nobody owns,”

could hardly have been contrived. Why not have made it a direct statutory offence, as in far more venial matters was done in the case of workmen? It is to be feared that the answer to this question must be given in the words of Adam Smith, quoted in a previous chapter—“Whenever the legislature attempted to regulate the differences between masters and workmen, its counsellors were always the masters” (q).

(q) It was only in 1851, and by the Act 14 Vict. c. 11, that the legislature, compelled by the great scandal created by the case of the Sloanes, convicted of the charge of starving

and ill treating their servant girl, made this offence a misdemeanor punishable by imprisonment for any term not exceeding three years, with or without hard labour.

CHAPTER VI.

CIVIL LEGISLATION RECIPROCALLY AFFECTING MASTERS, WORKMEN, SERVANTS, AND APPRENTICES.

BESIDES the statutes to which reference has been made, various Acts were passed during the period embraced under this branch of the subject, which contained provisions as to the settlement or adjustment of disputes between masters and workmen. Of these the following are the principal, viz.:—1st, 31 Geo. III. (a), in part intituled “An Act to prevent unlawful combinations of workmen, artificers, and labourers employed in the several trades and manufactures of this kingdom; and for the better payment of their wages; as also to prevent abuses in the making of bricks, and to ascertain their dimensions;” 2nd, the 39 & 40 Geo. III. c. 90 (already referred to), intituled “An Act for settling disputes that may arise between masters and workmen engaged in the cotton manufacture (b) in that part of Great Britain called England;” also, 3rd, a certain other Act, 39 & 40 Geo. III. c. 10 (c) (already referred to), intituled “An Act to prevent unlawful combinations of workmen, and to substitute other provisions in lieu thereof;” 4th, the Act 41 Geo. III. c. 38 (d), intituled “An Act to amend so much of an Act passed in the thirty-ninth and fortieth years of the reign of his present Majesty, intituled ‘An Act to repeal an Act passed in the last session of Parliament, intituled “An Act to prevent unlawful combinations of workmen,” and to substitute other provisions in lieu thereof,’ as relates to the forms of convictions therein referred to;” 5th, the Act 43 Geo. III. c. 151 (e), intituled “An Act for preventing and settling disputes which may arise between masters and weavers engaged in the cotton manufacture in Scotland, and persons employed by such weavers, and persons engaged in

V. CIVIL AS
AFFECTING
MASTERS
AND WORK-
MEN.

31 Geo. III.

39 and 40
Geo. III. c.
90.

39 and 40
Geo. III. c.
106.

41 Geo. III.
c. 38.

43 Geo. III.
c. 151.

(a) 31 Geo. III.

(b) 39 & 40 Geo. III. c. 90.

(e) 43 Geo. III. c. 151.

(c) 39 & 40 Geo. III. c. 106.

(d) 41 Geo. III. c. 38.

V. CIVIL AS
AFFECTING
MASTERS
AND WORK-
MEN.

44 Geo. III.
c. 87.

53 Geo. III.
c. 75.

ornamenting cotton goods by the needle;" 6th, the Act 44 Geo. III. c. 87 (*f*), intituled "An Act to amend an Act passed in the thirty-ninth and fortieth years of his present Majesty, intituled 'An Act for settling disputes that may arise between masters and workmen engaged in the cotton manufacture in that part of Great Britain called England;'" and 7th, the Act 53 Geo. III. c. 75 (*g*), intituled "An Act for the better regulation of the cotton trade in Ireland."

These Acts, attempting, as they did, to deal in an isolated and fragmentary manner, and by means of very imperfect machinery, with such an important matter as the adjustment of disputes between employers and employed, completely failed, as might have been expected, to accomplish the end in view.

We have now considered, as fully as seemed necessary, the third branch of the subject, viz., our industrial legislation, civil and criminal, from 1747 to 1824, comprised under the heads of—

First—

- I. Civil legislation affecting workmen, servants, and apprentices.
- II. Criminal legislation affecting the same parties.

Second—

- I. Civil legislation affecting masters.
- II. Criminal legislation affecting the same parties.

Third—

Civil legislation reciprocally affecting masters, workmen, servants, and apprentices.

Looking back upon this body of statutory law, it cannot fail to strike even the most cursory observer that it exhibits a manifest leaning to masters. It bears the unmistakable impress of class legislation. It is of course difficult, perhaps impossible, now to understand how far it was necessary or prudent to legislate exceptionally for the working classes, or whether it would not have been much better to have allowed both employer and employed to adopt the remedies which would have been afforded to them by the common civil and criminal law of the country; but certainly, according to the mode of thinking of the present day, the latter method would have resulted in both classes being now

(*f*) 44 Geo. III. c. 87.

(*g*) 53 Geo. III. c. 75.

found animated with kindlier feelings than those which have hitherto unfortunately marked their relations to each other.

While the industrial law of the country, as it existed during the period over which we have traversed, is not calculated to excite feelings of admiration or even respect, little can be said, so far at least as Scotland is concerned, in favour of the constitution and judicial procedure of the tribunals by which that law was administered, with perhaps the exception of the sheriff courts, which have, as far as possible, kept pace with the rapid advances of the country in trade and commerce. In England the county courts have almost overtaken the courts of the Scottish sheriffs in point of jurisdiction and efficiency; and we believe they are destined to become the essentially national courts of the two countries.

Constitution and judicial procedure of tribunals in England and Scotland.

The Court of Session has long been in a state of torpor, and was rapidly becoming fossilized. There is now, however, hope of its resuscitation. The great body of the solicitors of Scotland are at present excluded from its halls, which have hitherto been kept as preserves for two distinctive tribes of metropolitan practitioners, whose hunting grounds, however, are by no means limited to those of the capital. It is now proposed that this monopoly should cease and determine. The time of great changes is evidently at hand. The solicitors of Scotland are awakening to the full perception of the state of inferiority in which they have, it must be confessed, hitherto suffered themselves to be kept by the influence of their metropolitan brethren. The judicial system of the country will no doubt be subjected to rude assaults. We would counsel reform, but we cannot encourage destruction. The old reformers, in their blind zeal, demolished many of our finest edifices and objects of art. What we would say to the modern iconoclasts is—Spare all in the old that is good and useful, beautiful and true, but remove those two unseemly sphinxes inscribed with the characters “W.S.” and “S.S.C.” which frown before the portals of the palace called JUSTICE, that all who are found worthy, whether they be dwellers within the city or sojourners without the gates thereof, may be permitted to enter into the inner sanctuary without fear and without molestation.

Court of Session.

Exclusion from Court of Session of Scottish provincial solicitors.

Proposed reforms.

PART IV.

THE PROGRESS OF INDUSTRIAL LEGISLATION, CIVIL AND CRIMINAL,
AFFECTING MASTERS, WORKMEN, SERVANTS, AND APPRENTICES,
SINCE 1824,

CHAPTER I.

ARBITRATION ACT OF 1824.

ARBITRATION ACT OF
1824.

BEFORE entering upon our inquiry with regard to the industrial legislation subsequent to 1824, it will be necessary for us to examine the Arbitration Act passed in that year, which, as previously pointed out, we took as the stand-point from which it was proposed to survey the subject. As already mentioned, there were various Acts of Parliament passed previous to that year, having for their object the settlement of disputes between employers and employed by arbitration. These Acts were well fitted to exercise the ingenuity of lawyers, but were not calculated to benefit the parties for whose special behoof they were passed. In that year, however, an attempt was made to get quit of this patchwork legislation, and to frame a measure applicable to the whole kingdom. The result was the passing of the Act 5 Geo. IV. c. 96, intituled "An Act to consolidate and amend the laws relative to the arbitration of disputes between masters and workmen." It proceeds upon the preamble that "It is expedient that the laws relative to the arbitration of disputes between masters and workmen should be consolidated and amended, and one general law made applicable to every description of trade and manufacture." Upwards of half a dozen previous Acts are either wholly or partially repealed by this enactment, which is still the ruling Act on the subject, although passed upwards of forty years ago. It cannot, however, be said

5 and 6 Geo.
IV. c. 96.

Has not
worked well
in practice.

to have worked well in practice, or to have been taken advantage of to any great extent. This arises not merely from the cumbersome nature of its provisions, but also from the fact previously noticed, and which cannot be overlooked, that the working classes generally regard a justice of peace court more in the light of a penal than in that of an equitable tribunal, and as having a decided leaning to masters. Whether this idea as to the leaning of the court is well founded or not, at all events it exists, and it is, in fact, daily gaining strength. One effect, therefore, of the passing of the "Councils of Conciliation Act, 1867," will be to provide a tribunal which cannot be liable to this suspicion, as it will represent both masters and workmen.

The second section of the Act (Geo. IV.) enumerates the causes of disputes between masters and workmen, or between workmen and those employed by them; such, for instance, as disagreements respecting work done, or in course of being done, whether such disputes should arise respecting the payment of wages agreed upon, or the hours of work fixed, or any injury or damage done to the work, or respecting any delay or damage done in finishing the same, in a tradesmanlike manner, or according to contract, or with regard to bad materials. Also cases where workmen are to be employed to work any new patterns which would oblige them to purchase any new implements, or to make any alterations upon old ones, and where the compensation cannot be agreed upon between the masters and workmen; disputes respecting the length, breadth, quality, or price of goods, or, in the case of cotton manufactures, the yarn thereof, or the quantity and quality of the wool; disputes respecting the wages, or compensation for prices of goods that are made of any great or extraordinary length; and generally disputes arising out of the particular trade, or manufacture, or contracts relative thereto, which could not be otherwise mutually adjusted and settled. It was provided, however, that nothing contained in the Act should authorize any justice to establish a rate of wages or price of labour of workmanship at which the workman should in future be paid, *unless with the mutual consent of both master and workman.*

ARBITRATION ACT OF 1824.

Causes of disputes between masters and workmen.

Nothing to authorize rate of wages to be fixed for the future, unless with consent of both parties.

All complaints made by workmen as to bad materials are to be made within three weeks of his receiving the same, and all complaints arising from any other cause are to be made within six

Complaints by workmen as to bad materials.

ARBITRA-
TION ACT OF
1894.

Both parties
to appear
before
justice.

Procedure
where party
does not ap-
pear.

days after such cause of complaint should arise. This period has, however, been extended to fourteen days (a). The term justice of peace has been construed to mean magistrates, so that the jurisdiction conferred can be exercised by burgh magistrates, although not in the commission of the peace (b). When both the master and workmen are willing to have their disputes settled by arbitration under this Act, they appear before the justice personally, or agree by a writing under their hands to abide by the determination of the justice; and in either of these cases he can hear and determine the matter in a summary manner. But if there is no such mutual agreement to refer to arbitration, then the course is for the party considering himself aggrieved to make a complaint to the justice of peace or magistrate (c). He must show, however, in the first place, that the other party has been called upon to settle the same, and has either refused or delays to do so. The party complained against is then summoned to appear within three days. If he does not appear, or, if appearing, he fails to do away with the cause of complaint, the judge is empowered, at the request of either of the parties, to nominate arbitrators or referees for settling the matter in dispute, and he can propose not fewer than four persons, nor more than six, one-half of whom must be master manufacturers, or their agents or foremen, and the other half of whom shall be workmen in such manufacture, residing in or near the place where the dispute has arisen, from whom each party shall choose one, who shall have full power to decide the dispute. If one of the parties does not appear, the justice is empowered to elect an arbiter for him. In case the arbiters named should either delay or refuse to take up the reference, or should not, within two days after being nominated, act as arbiters, the justice can name others in their room, who shall meet within twenty-four hours after nomination, for the purpose of hearing and determining the case. The expense of a second nomination falls upon the party through whose default, or through the default of whose referee, the application for a new nomination has been rendered necessary. If either of

(a) 7 Will. IV. and 1 Vict. c. 67, s. 1.

(b) 7 Will. IV. s. 3; ib.

(c) See the following cases, viz.:—*Ex parte Payne*, 5 D. & L. 679; *Crisp v. Benbury*, 8 Bing. 394; *Morrison v. Glover*, 4 Exch. 430; *Doe v. Glover*,

15 Q. B. 103; and *M'Dougal v. Paterson*, 6 Exch. 337 (note). These are not cases under the Act, but they show how far a demand for arbitration can oust the jurisdiction of the superior courts.

the second arbitrators should not attend at the time and place specified for that purpose, then the other who does attend can hear and determine the case alone, and his decision will be final, and not be subject to review of any kind. Where the arbiters originally named accept, and are ready to act, the justice appoints a place of meeting according to the directions of the Act, and a day and hour for the attendance of parties; and the arbiters are to hear and examine the parties and their witnesses, and determine the dispute within two days. Where necessary, the place of meeting may be at the place where the works are carried on.

ARBITRATION ACT OF 1824.

Procedure in Arbitration.

The arbiters are invested with power to compel the attendance of witnesses, and also to examine them upon oath. In the event of their refusal to attend or to give evidence, they may be committed to prison for any period not exceeding two calendar months, and not less than seven days. If the arbiters cannot agree in opinion, or shall not give their award within three days after the order of the justice certifying their appointment, they require to go before the justice by whom they were appointed, and in case of his absence or indisposition, before any other justice acting for the same county, and residing nearest to the place where the meeting to settle such dispute has been held, and shall state the points in difference between them, which the justice is required to hear and determine upon the statement of the arbiters, and to settle with all possible despatch, and in all cases within the period of two days after the time allowed by the Act for the arbiters meeting, and signing their award. If either of the arbiters refuse to go before the justice, he is empowered to settle the differences upon the statement of the other. It is specially provided that no justice of the peace who is a manufacturer or agent, shall sit as such under this Act. Where the parties mutually agree that the matter in dispute shall be arbitrated and determined in a different mode from the one prescribed by the Act, such agreement shall be valid, and the award and determination therein final and conclusive between the parties, and the same remedies of distress and sale and imprisonment, as provided by the Act, shall be had towards enforcing the provision of the Act.

Powers of Arbiters.

Disputes may be arbitrated in different mode by agreement.

There is a provision that where any work shall have been delivered to any workman by the agent or servant of any master, to be, when finished, delivered to such agent or master, and also

ARBITRATION ACT OF 1894.

Same proceedings against servant, agent, or partner as against principal.

where two or more persons shall carry on business as partners in any manufacture, in every such case the like proceedings shall be had against such servant, agent, or partner, as if the same had been made against the principal, or all the partners, who shall all obey the award made thereupon, and all such orders as shall be made by the justice in or respecting the matters in dispute, and shall be subject to the same proceedings and consequences for refusing or delaying to abide by or perform the same as if the proceedings had been against the principal, or all the partners. In the event of the master's bankruptcy, the trustee upon the estate will be held liable to all the proceedings authorized by the Act against the master, as fully as the latter was previous to his bankruptcy.

Proceedings by married women, pupils, and minors.

Where proceedings require to be taken by a married woman, or a minor, or pupil, they can be taken in name of the husband or father. If the father is dead, they may be in the name of the mother; and if both are dead, the proceedings can be taken in the name of any relative, or by the surety in the indenture. It is also provided that, with every piece of work given out by a manufacturer to a workman to be done, there shall (if both parties are agreed) be delivered a note or ticket, in such form as the parties shall agree to, and which shall be evidence of all matters and things mentioned therein respecting the same, a duplicate of which is to be kept by the master or his agent, in case the workman should lose or fail to produce the other. This provision, however, has been altered by a subsequent Act (8 & 9 Vict. c. 77, 1845) so far as regards the manufacture of hosiery (*d*). By section 1 of that Act it is provided that a ticket shall be given according to a form in a schedule annexed, and a duplicate kept; 2nd, that the ticket and duplicate shall be evidence of all things mentioned therein, or respecting the same; 3rd, that where the dispute is alleged to be improper or imperfect work, the piece of work shall be produced, and if not produced, shall be taken as sufficiently and properly executed; 4th, the manufacturer or agent neglecting or refusing to give a ticket, is liable to a penalty not exceeding £5 with costs, on complaint to a justice not being concerned in the trade; 5th, power is given to summon witnesses, who, failing to appear, are liable to a penalty of £2; 6th, twenty-four hours at least is the period of sum-

Tickets and duplicates in hosiery trade.

(*d*) 8 & 9 Vict. c. 77.

mons; 7th, penalties are recoverable by distress under the Act 3 Geo. IV. cap. 36; 8th, there is a prohibition of appeal to her Majesty's superior courts of record. A similar Act regulates silk weavers—8 & 9 Vict. c. 128, s. 145 (e). ARBITRATION ACT OF 1824.

By section 13 it is provided that, "in all cases of dispute as aforesaid, as in all other cases, if the parties mutually agree that the matter in dispute shall be arbitrated in a different way to the one prescribed, such agreement will be valid, and the award thereon final and conclusive." The same proceedings of distress, sale, and imprisonment, will follow upon such an award as under one made under the powers of the Act (f).

It is provided by the 20th section of the Arbitration Act that no manufacturer who shall have received into his possession any article without objection made within twenty-four hours by himself, or his clerk, or foreman, can afterwards make any complaint on account thereof. Should both the plaintiff and defendant agree to extend the time given for making the award, they Award. can do so by an endorsement on the back of the order of the justice of the peace, according to a form given in the schedule of the Act, which is to be signed by both of them, in presence of witnesses. There is also a form of award given, and on the fulfilment thereof the same is to be acknowledged by the party on whose behalf it was made, which, with the award itself, is to be given to the party fulfilling the same.

Where either of the parties refuses or delays to fulfil an award Recovery of sums awarded. for two days after the same shall have been reduced into writing, the justice is empowered, upon the application of the person aggrieved, to issue a warrant for levying the sums found due by distress and sale of the goods of the defaulter; and in case the same cannot be recovered, a warrant is granted to commit the party failing to implement it to prison for any period not exceeding three months. It was doubted whether imprisonment could follow under this Act where the amount did not exceed £8 6s. 8d. In cases falling under the Truck Act and the Merchant Shipping Act, penalties were held to be civil debts. Under the latter Act a party was liberated from prison where the sum for which he

(e) 8 & 9 Vict. c. 128, s. 145.

(f) The probable intention of this provision is to give power to parties to refer the dispute mentioned in section 2 to some other mode of arbitration

than that specially mentioned in the Act; and with regard to other disputes, either to have them disposed of by the machinery of the Act or in some other manner.

ARBITRA-
TION ACT OF
1824.

was convicted was less than £8 6s. 8d.; but by a subsequent Act (19 & 20 Vict. c. 46, 1856) judgments under the Arbitration Act now under consideration are excepted from the Act abolishing imprisonment for small debts (*g*).

The following are the fees charged under this Act :—

Table of fees.

TO THE CLERK OF THE JUSTICES.

	s.	d.
For each summons,	0	2
For every oath or affirmation,	0	3
For drawing and entering order,	0	4
For every warrant,	0	6

TO THE CONSTABLE OR OTHER PEACE OFFICER.

For service of summons or order,	0	4
For executing warrant of distress and sale of goods,	1	0
For custody of goods distrained, per day,	0	3
For every caption,	0	6

These fees are exceedingly reasonable, indeed, quite as much so as the corresponding charges in France. All documents drawn up under the provisions of the Act are exempt from stamp duty.

Costs.

It is provided by section 32 that all costs, time, and expenses attending the application to justices, and of the arbitration pursuant thereon, shall be fixed by the arbitrators by whom the dispute shall be settled; and where the dispute shall be determined by any justice of the peace, then the costs, time, and expenses shall also be settled by him, and he is empowered to do so in the event of the arbiters not being able to agree on the subject, and in case of his absence or indisposition any other justice of the county or place can do so. It is also provided that a master manufacturer, his foreman, or agent, shall not in any case be allowed for costs, time, or expenses, unless it shall appear to the justices that the proceedings of the workmen were vexatious and oppressive. A copious appendix of forms is annexed to the Act.

There is no doubt that this Act was a step in the right direction, but, as already observed, it is cumbrous in its provisions, and involved two sets of judges—first, the justices of the peace, and, second, the arbiters.

Observa-
tions of Mr.
Montgom-
erie Bell.

The late Mr. Montgomerie Bell, in the introduction to his excellent work on Arbitration, says, in referring to this Act—

(*g*) 19 & 20 Vict. c. 46.

"The statute appears to have been framed in a philanthropic spirit, but perhaps its practical operation may be materially impeded by the circumstances that its provisions would frequently have the effect of devolving the dispute upon one or more justices of the peace, not selected by the parties themselves to be their arbitrators. Each of the two original arbitrators being selected respectively from the masters, foremen, &c., by a master, and from the workmen by workmen, there would seem to be no inconsiderable improbability of their being influenced by class feeling, and differing from each other in opinion respecting the disputes submitted to them. And if so, they are enjoined, as has been already noticed, after the lapse of three days (where the time has not been enlarged by the parties), to devolve the matter upon one or more of the justices of the peace.

ARBITRATION ACT OF 1824.

"Nevertheless, this series of statutes well deserves attention, as it forms no uninteresting chapter in the domestic economy of the country, and bears strong testimony to the reliance which the British Legislature inclines to place upon the amicable tribunal of the arbiter as being well adapted to sopite a class of disputes of a peculiarly exciting and sometimes of a dangerous character" (h).

No action can be brought against any arbitrator, justice of the peace, constable, headborough, or other officer, or against any other person for any matter or thing whatsoever done under, or by virtue or in the execution of, the Act, unless within six calendar months after the doing or committing of the act or thing.

Limitation of actions for acts done under Act.

This Act was amended by an Act passed in 1837 (i), intituled "An Act to amend an Act of the fifth year of his Majesty King George IV., for consolidating and amending the laws relative to the arbitration of disputes between masters and workmen." It consists of three clauses. The first extends the period for making complaints by workmen to fourteen days, instead of six; the second provides that the justices having jurisdiction where the party complained against resides are to have jurisdiction in the matter of the said Act; and the third enacts that the words "justice of peace" shall mean "magistrate."

Amendment Act of 1837
7 Will. 4 and
1 Vict. c. 67.

(h) The Law of Arbitration in Scotland, by J. M. Bell, advocate. Introduction, p. 11.

(i) 7 Will. IV. and 1 Vict. c. 67.

CHAPTER II.

CIVIL AND CRIMINAL LEGISLATION, AFFECTING WORKMEN, SERVANTS, AND APPRENTICES, SINCE 1824.

FROM the point which has just been considered in the immediately preceding chapter, we have now to look forward instead of backward upon the field of industrial legislation. The prospect is certainly more inviting than the retrospect. The Arbitration Act of 1824 indicated that a change was coming in the right direction. This statute, however, partook more of the character of a flagstaff planted to indicate the point at which the line of improvement was to commence, than of an actual step in the progress itself. It was a token, however, that more generous and liberal measures affecting the relations between employers and employed were to be looked for; and this was an expectation not doomed to be disappointed, although the same thing could not be said of the anticipations formed of the measure itself.

In treating of our industrial legislation since 1824, under this the fourth division of the subject, it will be convenient to adhere to the arrangement followed in the previous part of the work. We have therefore to consider—

First—

- I. Civil legislation, as affecting workmen, servants, and apprentices, since 1824.
- II. Criminal legislation as affecting the same parties.

Second—

- I. Civil legislation as affecting masters.
- II. Criminal legislation affecting the same parties.

Third—

Civil legislation reciprocally affecting masters, workmen, servants, and apprentices.

I.—CIVIL LEGISLATION, AS AFFECTING WORKMEN, SERVANTS, AND APPRENTICES, SINCE 1824.

The first Act that claims our attention is the 10 Geo. IV. c.

52 (a), intituled "An Act to extend the powers of an Act of the fourth year of his present Majesty, for enlarging the powers of justices in determining complaints between masters and servants, to persons engaged in the manufacture of silk." The Act here referred to is the 4 Geo. IV. c. 34 (b), and it is provided that the provisions of that Act shall be extended to all persons engaged in the trades and occupations mentioned in the 17 Geo. III. c. 56, or Embezzlement Act, being persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, and silk manufactures. The parties enumerated in the 4 Geo. IV. c. 34, were servants in husbandry, artificers, calico-printers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and labourers.

I. CIVIL AS AFFECTING WORKMEN, &c.

10 Geo. IV. c. 52, extends provisions of 4 Geo. IV. c. 34, to persons mentioned in 17 Geo. III. c. 56.

Description of workmen in previous Acts.

This is the only Act to which we can refer under this head, as affecting workmen, servants, and apprentices *per se*, the Act 4 Geo. IV. c. 34, as qualified by the 10 Geo. IV. c. 52, having been the ruling statute applicable to these parties up to 20th August, 1867, when the Master and Servant Act of that year was passed, and which will receive consideration under its appropriate head (c).

II.—CRIMINAL LEGISLATION AS AFFECTING WORKMEN, SERVANTS, AND APPRENTICES.

The laws against combination by workmen, instead of having worked beneficially, were found to be exceedingly mischievous, and were all but universally condemned. Their speedy repeal, therefore, was demanded upon every sound principle of social and political economy. This was accomplished by the passing of the Act 6 Geo. IV. c. 129 (d).

II. CRIMINAL AS AFFECTING WORKMEN, &c.

That Act, after reciting the 5 Geo. IV. c. 95, which had been passed in the previous session of Parliament, proceeds upon the further preamble to state "That it is expedient to make further provision, as well for the security and personal freedom

6 Geo. IV. c. 95, preamble.

(a) 10 Geo. IV. c. 52.

(b) 4 Geo. IV. c. 34.

See 5 & 6 Vict. c. 7, An Act to explain the Acts for the better regulation of certain apprentices.

(c) *Vide* Civil Legislation affecting Masters, Workmen, and Apprentices, *post*, chapter vii.

See, however, the Act 5 & 6 Vict.

c. 7 (1842), which extends the 4 Geo. IV. c. 29, and Acts therein referred to, to apprentices where no sum or premium of apprenticeship has been paid or shall be paid on the binding of such apprentice. This Act is, however, superseded by 30 & 31 Vict. c. 141.

(d) 6 Geo. IV. c. 129.

II. CRIMINAL
AS AFFECT-
ING WORK-
MEN, &c.

6 Geo. IV.
c. 129.
Combina-
tions.

of individual workmen in the disposal of their skill and labour, as for the security of the property and persons of masters and employers, and for that purpose to repeal the said Act, and to enact other provisions and regulations in lieu thereof." Accordingly a clean sweep is made of upwards of thirty Acts of Parliament, both English and Scottish, ranging over a period of upwards of five hundred years. Such a thorough excision of useless and pernicious legislation positively enables one to read through this Act with something like a feeling of pleasure, although about seven pages of pretty close print are taken up with the mere enumeration of the titles. How many more could be thrown overboard if our legislators would only be prevailed upon to cease heaping, year by year, Ossa upon Pelion—Act upon Act—and instead of giving additional powers to justices of the peace, would simply hand over to the ordinary judges the civil and criminal business of the country, leaving all trade disputes and questions between master and servant, as in France, to be decided by the courts of conciliation established by the Act of 1867?

Persons who
by violence
or by threats
intimidate
workmen to
depart from
hiring, liable
to imprison-
ment with
hard labour.

The third section provides that if any person shall by violence to the person or property, or by threats or *intimidation*, or by molesting or in any way obstructing another, force or endeavour to force any journeyman, manufacturer, workman, or other person hired or employed in any manufacture, trade, or business, to depart from his hiring or to return his work before being finished, or prevent or endeavour to prevent him from being hired or employed, he shall, for this and the other acts specified in this section, on conviction be imprisoned and kept to hard labour for any time not exceeding three months (*e*).

Not to affect
meetings of
masters or
workmen for
determining
rate of
wages.

It is declared by the fourth section that the Act is not to affect meetings for settling rates of wages to be demanded, or fixing the hours of work during which the persons attending such meetings shall be employed.

In the same way, by section fifth, it is provided that the Act shall not affect any meeting of masters for the purpose of consulting upon and determining the rate of wages or prices which they shall pay to their workmen.

(*e*) A conviction by a metropolitan police magistrate held sufficient.

See 2 & 3 Vict. c. 71, s. 48. *Ex parte* Perham, 29 L. J. M. C. 33. Not

necessary to state threats were used against any particular person, nor the precise threats employed.

The sixth section provides that an offender shall be obliged to give testimony when called upon as a witness on behalf of the crown, or of the prosecutor or informer against any person other than himself; and it is declared that such parties shall be thereby indemnified against any prosecution against themselves.

II. CRIMINAL
AS AFFECT-
ING WORK-
MEN, &c.
6 Geo. IV.
c. 129.
Offenders
obliged to
give testi-
mony as wit-
nesses.

The seventh section makes provision for the justices summoning offenders, and for warrants being issued on their not appearing, and as to the proceedings to be followed (f).

Power is given by the eighth section to the justices to summon witnesses, and to proceed in the complaints to be brought under the Act; and to grant a warrant for imprisoning any witness not appearing for three calendar months, or until he shall submit to be examined (g).

Powers given
to justices to
summon
witnesses.

The ninth, tenth, and eleventh sections relate to the forms of convictions and proceedings in Scotland; and the twelfth provides that an appeal may be taken to Quarter Sessions" (h).

Conviction
and appeal.

This Act was amended by the 22 Vict. c. 34, intituled "An Act to amend and explain an Act of the sixth year of the reign of King George IV. to repeal the laws relating to the combination of workmen, and to make other provisions in lieu thereof." This Act was passed on the preamble that "different decisions have been given on the construction of the said Act."

22 Vict. c.
34, amends
and explains
previous
Act.

It is therefore enacted "That no workman or other person, whether actually in employment or not, shall, by reason merely of his entering into an agreement with any workman or workmen, or other person or persons, for the purpose of fixing, or endeavouring to fix, the rate of wages or remuneration at which they, or any of them, shall work, or by reason merely of his endeavouring peaceably and in a reasonable manner, and without threat or intimidation, direct or indirect, to persuade others to cease or abstain from work, in order to obtain the rate of wages, or the altered hours of labour, so fixed or agreed upon, or to be agreed upon, shall be deemed, or taken to be, guilty of 'molesta-

Preamble.

Workmen
not liable to
prosecution
for combin-
ing to raise
wages with-
out threats
or intima-
dation.

(f) The offender may be brought before one metropolitan police magistrate—see 2 & 3 Vict. c. 71, s. 14; see *R. v. St. George, Bloomsbury*, 20 L. J. M. C. 200—or two other justices having jurisdiction within the district, 3 & 4 Vict. c. 84, s. 6. See also 11 & 12 Vict. c. 43, s. 33.

(g) See as to power of court in

awarding penalties. *R. v. Rowlands*, 17 Q. B. 671; 8 C. 2 Den; C. C. 364.

(h) Notices of appeal should be given to other side. See *Re Blues*, 5 E. and B. 291; 8 C. 24; L. J. M. C. 138. Procedure in Scotland regulated by 27 & 28 Vict. c. 53. See as to time for entering into recognizance, *R. v. Aston*, 1 L. M. and P. 491, and *Blues supra*.

11. CRIMINAL
AS AFFECT-
ING WORK-
MEN, &c.
22 Vict. c. 34.

tion' or 'obstruction' within the meaning of the said Act, and shall not, therefore, be subject or liable to any prosecution or indictment for conspiracy; provided, always, that nothing herein contained shall authorize any workman to break or depart from any contract, or authorize any attempt to induce any workman to break or depart from any contract" (i).

Observa-
tions of
Chief-Just-
ice Tindal
as to combi-
nations of
workmen.

The following observations were made upon the statute of 4 Geo. IV. c. 129, by Chief-Justice Tindal, when charging the grand jury at the Stafford Special Commission in 1842 (j):—
"If," says he, "the workmen of the several collieries and manufactories who complained that the wages which they received were inadequate to the value of their services, had assembled themselves peaceably together for the purpose of consulting upon and determining the rate of wages or prices which the persons present at the meeting should require for their work, and had entered into an agreement amongst themselves for the purpose of fixing such rate, they would have done no more than the law allowed. A combination for that purpose, and to that extent (if, indeed, it is to be called by that name), is no more than is recognized as legal by the statute 6 Geo. IV.; by which statute, also, exactly the same right of combination, to the same extent and no further, is given to the masters when met together, if they are of opinion the rate of wages is too high. In the case supposed—that is, a dispute between the masters and the workmen as to the proper amount of wages to be given—it was probably thought by the legislature, that if the workmen on the one part refused to work, or the masters on the other refused to employ, as such a state of things could not continue long, it might fairly be expected that the party must ultimately give way whose pretensions were not founded in reason and justice—the masters if they offered too little, the workmen if they demanded too much. But unfortunately for themselves and others, those who were discontented did not rest here. Not satisfied with the exercise of their own right to withhold their own labour if they were discontented with the price they received for it, they assumed the power of interfering with the rights which others

(i) Administering oaths not to work and to keep secrets, is unlawful under the statutes 37 Geo. III. c. 123; 39 Geo. III. c. 79; 52 Geo. III. c. 104; and 57 Geo. III. c. 19. *R. v. Ball*, 6 C. & P. 563; *R. v. Lovelass*, 6 C. & P. 596; S. C. 1; *M. & Rob.* 349; *R. v. Dixon*, 6 C. & P. 601.

(j) *Carr & M.* 662, note.

possessed of exercising their discretion upon the same point; and accordingly you will have numerous cases laid before you in which large bodies of dissatisfied workmen interfered by personal violence, and by threats and intimidation, to compel others who were perfectly willing to continue to labour in their callings at the rate of wages then paid, to desist from their work, to leave the mine or manufactory, and against their own will to add themselves to the numbers of the discontented party—than which a more glaring act of tyranny and despotism by one set of men over their fellows cannot be conceived. *If there is one right which, beyond all others, the labourer ought to be able to call his own, it is the right of the exertion of his own personal strength and skill in the full enjoyment of his own free will, altogether unshackled by the control or dictates of his fellow-workmen:* yet, strange to say, this very right which the discontented workman claims for himself to its fullest extent, he does, by a blind perversity and unaccountable selfishness, entirely refuse to his fellows who differ in opinion from himself. It is unnecessary to say that a course of proceeding so utterly unreasonable in itself, so injurious to society, so detrimental to the interests of trade, and so oppressive against the rights of the poor man, must be a gross and flagrant violation of the law, and must be put down, when the guilt is established, by a proper measure of punishment.”

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AS AFFECT-
ING WORK-
MEN, &c.

Observa-
tions of
Chief-Jus-
tice Tindal
as to combi-
nations of
workmen.

Patteson, J., in passing sentence upon prisoners who had been convicted upon an indictment under the statute of Geo. IV. c. 129 (k), said—“The object of the legislature was that all masters and workmen should be left free in the conduct of their business. The masters were at liberty to give what rate of wages they liked, and to agree among themselves what wages they would pay. In like manner, the workmen were at liberty to agree among themselves for what wages they would work, and were not restricted in so doing by the circumstances that they were in the employ of one or other of the masters. The intention of the legislature was to make them quite free; but seeing that intimidation might be used to carry out such agreements, it was enacted by 6 Geo. IV. c. 129, s. 3, that (the learned judge here read that section, and added) *the offence did not consist in the combination to raise their wages, but in the use of threats, intimidation, molestation, and obstruction.*”

Observa-
tions of
Patteson, J.,
in R. v. Row-
lands as to
combina-
tions.

(k) R. v. Rowlands, Q. B., Mich. Term, 1851; 17 Q. B. 671; S. C. 5; Cox C. C. 436.

II. CRIMINAL
AS AFFECT-
ING WORK-
MEN, &c.

Dictation by
workmen to
masters ille-
gal.

Club fines.
R. v. Hewitt.

Conspiring
to reduce or
increase
wages.

Workmen
demolishing
master's
house; R. v.
Batt.

It has been held, since the passing of the 6 Geo. IV. c. 129, that a combination of workmen for the purpose of dictating to their masters what workmen they shall employ is indictable (l); and it was held that an indictment for conspiring to prevent the workmen of a party from continuing to work, was supported by evidence of a conspiracy to procure the discharge of *any* of the workmen, as the indictment did not necessarily lay the intent as to *all* the workmen (m).

In the case of *R. v. Hewitt* (n), a club of workmen had been established to impose fines upon those who worked for masters who were obnoxious to the society; one of the parties refused to pay a fine incurred by him, upon which his fellow-workmen would not work with him, and his employer was consequently obliged to dismiss him. Lord Campbell, C. J., held that the conduct of the men was illegal.

If masters or workmen conspire to accomplish a reduction or increase of wages by violence, threats, intimidation, or other unlawful means, they may be indicted for conspiracy (o).

A conspiracy has been defined to be "an agreement for an unlawful purpose, or to effect a lawful purpose by unlawful means" (p). Lord Denman, C. J., stated in one case that he thought the antithesis not very correct (q), and in another case said that the words "at least" should accompany the definition (r).

A party of colliers who entertained ill-will to a coal lumper because he paid less than the usual wages, went to his house and created a mob and riot, and broke the windows and portions of his house. Gurney, B., held that they might be convicted of beginning to demolish, under the statute 7 & 8 Geo. IV. c. 30, s. 8, though their principal object was to injure the lumper, provided it was also their intention to demolish the house (s).

Allusion was formerly made to the laws of France upon the subject of combinations (*coalitions*), as being similar to those

(l) *R. v. Bykerdike*, 1 Moo. & Rob. 179; combination bond illegal, *Hilton v. Eckersley*, 6 E. & B. 47; S. C. 24; L. J. Q. B. 353.

(m) *R. v. Ferguson*, 2 Stark, 489.

(n) 5 Cox Crim. Cas. 162.

(o) *R. v. Duffield*, 5 Cox. Cr. C. 404; *R. v. Rowlands*, *ante*.

(p) *R. v. Jones*, 4 B. & Ad. 349; *R. v. Stewart*, 1 A. & E. 713; *O'Connell v. R.*, 11 Cl. & F. 233.

(q) *R. v. Peck*, 9 A. & E. 690.

(r) *R. v. King*, 7 Q. B. 788.

(s) *R. v. Batt*, 6 C. & P. 329.

Note.—See generally 2 Russ. on Crimes, by Greaves, book ii. c. 2, p. 674; and *R. v. Kenrick*, 5 Q. B. 49; *R. v. Button*, 11 Q. B. 929, where other authorities are stated. See also note to Mr. Justice Coleridge's edition of Blackstone's Commentaries, vol. iv. p. 136.

enacted in Great Britain. The French were slower in making a change than we were in this respect, as it was only in 1864 that an alteration was made in the *Code Pénal* with regard to them. The following articles were substituted for those to which we have previously referred (t):—

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ING WORK-
MEN, &c.

“Article 414. The punishment of imprisonment for a term not less than six days and not exceeding three years, and of a fine not less than 16 francs and not exceeding 3000 francs, or one of these punishments only, shall be imposed on every person who by means of violence, blows, threats, or fraudulent practices, shall institute or maintain, or attempt to institute or maintain, a concerted cessation of work with the object of forcing an increase or reduction of wages, or of putting restraint upon the free exercise of industry or labour.

French law
as to com-
binations of
workmen.

“Article 415. Whenever the acts punished by the preceding article shall have been committed in pursuance of a concerted plan, the guilty parties may be subjected by the decree or judgment of the court to the surveillance of the *haute police* for the period of two years at least, of five years at most.

“Article 416. The punishment for a term not less than six days and not exceeding three months, and of a fine from 16 to 300 francs, or one of these punishments only, shall be imposed upon all workmen, *patrons*, and contractors, who by the means of fines, prohibitions, proscriptions, or interdictions, pronounced in pursuance of a concerted plan, shall put restraint upon the free exercise of industry or labour.”

The alterations above referred to were made in consequence of the recommendation of a commission, the report of which was drawn up by M. Ollivier. The principle upon which the new enactment was framed he explained as follow:—

Report of
M. Ollivier.

“Under a *régime* such as ours is, of the liberty of property, of labour, and of trade, every workman may offer or refuse his labour, and may fix the conditions upon which he gives it, just as every employer is free to accept or refuse those conditions. A number of workmen or a number of masters have equally, as all will allow, the right of acting in the same manner simultaneously, supposing at least that there is no previous concert between them. But how does that which is lawful for an individual, and which is lawful for many to do simultaneously, become unlawful and

(t) *Ante*, p. 122.

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as to com-
binations of
workmen.

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M. Olivier.

condemnable because those who have the same interests and the same wants, and who have that natural bond between them which a community of interests and wants engenders, agree to act freely together, and peacefully to carry out a common resolution? It is incontestable, that if one examines this act of concert and this common resolution considered by itself, and on its own merits, it is impossible to consider it as a punishable offence. The proposal to make innocent that which we have called simple coalition, is founded, as we have said already, on the principle of the liberty of labour. The same principle demands that whenever *coalition* is accompanied by violence, threat (*menace*), or intimidation, it ought to be repressed and punished in the case of those persons who employ these means for provoking it."

The report then explains the principle of political economy on which the new law was based. After noticing the principle on which the alterations of 1849 had been made, it proceeds as follows:—

"One would dispute the exact truth of the economic theory of the honourable reporter of the law of 1849, according to which the law of supply and demand is the only regulator of the rate of wages, and say that, supposing the relation between the supply and demand plays, in effect, the principal part in fixing the rate of wages, this law is nevertheless compelled to work in conjunction with certain secondary laws, which have also their influence in the matter. It is, indeed, impossible to deny that the rate of wages is influenced to a certain measure by the necessity under which the workman is placed of obtaining from his wages a sufficient means of subsistence. It is impossible to deny that the rate of wages is influenced in an inverse manner by the necessity under which an employer is placed of regulating the cost price of his goods, so as to sustain competition with other manufacturers, either at home or abroad. It is this *ensemble* of economic laws which combine in the determination of the rate of wages. On the other hand, these combined laws act with such power that it is impossible to suppose that the weight of a coalition, whether of masters or workmen, formed freely and without means of intimidation, could disturb their action otherwise than in an accidental and temporary manner, which does not call for the intervention of the legislature. It ought to be added, because it is true, that in some cases, happily becoming more and more rare, the right

of combining in a peaceful manner to carry out common resolutions is the only means which can secure the liberty of labour to workmen.

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"There are manufactures and localities where the rate of wages fixed in former times tends to maintain itself improperly against the economic laws, the action of which ought to raise it, by the mere force of custom, and by the sole fact that it was a long time the same.

"Well, then, in these different cases what would avail the complaints of one or a few individuals? They must be powerless against the refusal of a master who has, over the isolated workman who makes the complaint, the advantages which his authority and his wealth give him, and who becomes still stronger when fortified either by custom, or by an agreement which the law cannot take hold of, made between him and other masters in the same trade. The isolated workman and the master, when discussing the question of wages, are not on an equal footing. This equilibrium cannot be established but by a recognized right on the part of workmen to make their demands collectively, and to enforce, if necessary, their common resolution by a concerted cessation of work, subject to the condition of keeping themselves within the terms of a peaceful union, and particularly of not making any attack upon the liberty of those of their comrades who wish to continue working."

French law
as to com-
binations of
workmen.

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M. Ollivier.

These passages exhibit the main principles on which the new articles were based. The following passages show what were probably the chief reasons for the change:—

"Because the present law, which wounds the conscience of the public, and which for this reason has never been applied to its full extent, far from being any real protection to those interests which it was intended to protect, has only served to engender among a portion of the working classes a disposition hostile both to their employers and the government.

"Because, lastly, it tends in the end to induce the labouring population to seek an asylum in that pernicious doctrine which makes the State the regulator of wages and dispenser of employment.

"The interference with the liberty of labour resulting from a strike will ordinarily arise on the part of masters from a desire to reduce unjustly the rate of wages, and on the part of workmen from a desire to try and raise them abusively. It may, however,

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be aimed at other conditions affecting labour. It might be directed against the substitution of piecework for daywork; against the duration of the hours of work: it will sometimes occur from the resistance offered to the introduction of a new machine or to the admission of apprentices."

The following cases decided in England are instructive:—

† Geo. IV. c.
129, s. 3.

Combinations to Force Journeymen to leave Work.—L., a workman, and member of a working man's society, being in the employ of a master who employed men not qualified by the rules thereof, O., the president, said he would use his influence to have him turned out of the society. L. continuing to work for his master, a meeting was called, to which he was summoned, the object of which was to discover whether he would leave his employ or be turned out of the society. G., another of the members, made a report of the proceedings of a previous deputation to the master of L. upon the subject, and O. then asked L. "Whether he intended to remain an honourable member of the club and leave the shop (his work); or continue it, be despised by the club, and have his name sent all over the country in the report, and be put to all sorts of unpleasantness?" Held that this was evidence on which O. might be convicted of unlawfully, by threats and intimidation, endeavouring to force L. to depart from his hiring within the meaning of 6 Geo. IV. c. 129, s. 3, but was not sufficient as against G. *O'Neil v. Longman*, 4 B. & S. 376; 9 Cox, C. C. 360; *Wightman and Blackburn*.

O. and G. were convicted upon an information for endeavouring, by threats and intimidation, to force K. to make an alteration in his mode of conducting his business, contrary to the 6 Geo. IV. c. 129, s. 3. The evidence was as stated in the preceding case. Held, first (per Cockburn, C. J., *Wightman and Mellor*, J. J.) that there was no evidence against O. *O'Neil v. Kruzer*, 4 B. & S. 389. Held, secondly (per Cockburn, C. J., and *Mellor*, J.; and *Wightman*, J., *dissentiente*), that the object of G. was to discuss with K. the terms of arranging the dispute between him and the club men in his employ, rather than to intimidate him, and therefore there was not sufficient evidence against G. *Ib.*

A conviction under 6 Geo. IV. c. 129, s. 3, by a metropolitan police magistrate, stated that P. was convicted of having unlawfully, by threats, endeavoured to force one W. J., who was then and there a workman, hired in his trade and business of a mason

by P., to depart from his hiring, contrary to the Act. Held that, by reason of the enactment in the Metropolitan Police Act, 2 & 3 Vict. c. 71, s. 48, this conviction was sufficient, as it stated the offence in the words of 6 Geo. IV. c. 129, s. 3, although it did not set out the threats which were used, or allege to or against whom they were uttered. *Perham, ex parte*, 2 El. & El. 383.

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A resolution was passed by a society of bricklayers that no society bricklayer would work for B. until such time as he parted with some of his apprentices. The men in B.'s employment were accordingly withdrawn. In reply to a letter from B. requiring to be informed why the men were taken away, the resolution was communicated to him in a letter from the secretary. The secretary and the president of the meeting at which the letter was written having been convicted under 6 Geo. IV. c. 129, s. 3, of using threats to compel B. to limit the number of his apprentices: Held that in the absence of any evidence to show that the letter communicating the resolution, though apparently an explanation, was in fact meant as a threat, the conviction could not be sustained. *Wood v. Bowron*, 2 L. R. Q. B. 21; 36 L. J. M. C. 5; 15 W. R. 58; 15 L. T. N. S. 207.

The workmen of S. had all struck, with the exception of one man of the name of James. The men, however, agreed to resume work, but upon returning and finding James still at work, they gave over work and retired; and in answer to a question of the master why they did so, a deputation from a trades' union, headed by the appellant, attended, who said, "We've come about James; we shall not allow James to work." Whereupon the master said, "It is a very hard case. James was the only man who stayed to help me with the special orders in hand." Whereupon the appellant said, "Well, it's of no use, we have made up our minds. He shall not work; he's a scoundrel. Unless you discharge him, your men shall not be allowed to work." Held that the appellant brought himself within the meaning of the 6 Geo. IV. c. 129, s. 3. *Shelbourne v. Oliver*, 13 L. T. N. S. 6; 30 Q. B.

4 Geo. IV. c.
129, s. 3.

The following cases decided in Scotland are also worthy of attention:—

In suspension of a conviction under the Act 6 Geo. IV. c. 129, the objection was taken that the complaint and relative oath were not dated. Lord Gillies (with whom concurred Lords Mackenzie

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and Moncrieff) held the objection good. "The date of a written document cannot be proved by parole. You cannot prove perjury where there is no date. Neither can the date be supplied by the deliverance of the judge." On the other side, Lord Medwyn (with whom concurred Lord Justice-Clerk Boyle) held that there was no authority by which summary petitions are required to be dated, and that it is not necessary that warrants of citation should have a date. The conviction was set aside on other grounds, 24th January, 1835. M'Leod; 13 Shaw, 1153.

By the 7th section of the Act, one or more justice or justices are authorized, on complaint on oath, to summon a party complained of to appear before two justices, and on failure to appear such justices may grant a warrant to apprehend the party; or without summons, if such justices shall think fit, they may issue warrant to *apprehend*. One justice, on a sworn complaint, granted warrant to *apprehend and convene*, and the accused parties appeared before two justices, who convicted. It was disputed and not settled whether they appeared voluntarily or had been apprehended. The court, on suspension, quashed the conviction, because the first warrant was to apprehend and granted only by one justice. Lords Gillies, Moncrieff, and Justice-Clerk (Boyle), held the error fatal. Lord Mackenzie, on the contrary, held that it is a general principle, applicable to justices as well as to judges, that there shall be a quorum for trying the case, but not for giving a warrant of apprehension; and with him concurred Lord Medwyn. The conviction was set aside. 24th January, 1835, M'Leod; 13 Shaw, 1153.

4 Geo. IV. c.
129, s. 3.

Conviction set aside because, 1st, complaint was not on oath; and 2nd, that declaration had been improperly taken and used in evidence. 4th April, 1859, Cochrane; 3 Irv. 396.

The statute requires a conviction to be filed in the records of the Quarter Sessions. Certain parties were convicted, and the two justices subscribed a conviction in the form given in the Act. The clerk sent with the prisoners a copy of the conviction, embodied in a letter addressed to the keepers of the prison. In a suspension, the court unanimously held that there should have been a commitment under the hands of the justices themselves. 24th January, 1835, M'Leod; 13 Shaw, 1153. An action of damages was subsequently dismissed, 10th June, 1837.

The following case decided in Ireland may also be consulted:—

Indictment for inciting persons *not to enter* into the employment of R. S. The evidence showed that these persons *had entered* into the employment of R. S. The prisoners being convicted, two questions were reserved—1st, Whether the offence charged was an offence at common law; 2nd, whether the evidence supported the indictment. Held, in a case reserved, that the indictment was bad and the conviction wrong. *The King v. Petitt*, *Jebb's Criminal Cases*, p. 151.

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4 Geo. IV. c.
129.

CHAPTER III.

II.—CRIMINAL LEGISLATION AS AFFECTING WORKMEN, SERVANTS, AND APPRENTICES.

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ING WORK-
MEN, &c.

6 & 7 Vict.
c. 40, as to
frauds and
embezzle-
ment by
workmen.

AS pointed out in a previous chapter (a), the Acts 22 Geo. II. c. 27, and 17 Geo. III. c. 56 (b), conferred upon the justices of the peace criminal jurisdiction over certain classes of workmen in cases of purloining or embezzlement of materials. These Acts continued to regulate proceedings of this nature up till the year 1843. In that year, however, an Act was passed, intituled "An Act to amend the laws for the prevention of frauds and abuses by persons employed in the woollen, worsted, linen, cotton, flax, mohair, and silk hosiery manufactures, and for the further securing the property of the manufacturers and wages of the workmen engaged therein" (c). Upon the preamble that eight previous Acts, specially referred to, and including the two above mentioned, had not been effectual to prevent frauds, embezzlements, and abuses by persons employed in the trades referred to in the title, they are repealed in so far as they relate to the woollen, linen, cotton, flax, mohair, and silk manufactures, or any of them, or any manufactures made of these materials.

Any person
pawning or
embezzling
materials
may be con-
victed by
oath of
owner or
other credi-
ble witness.

Penalty £10
and costs.

In place of the provisions of the former Acts, it is, by the first section of the Act in question, enacted, that if any person is convicted of pawning or embezzling any of the materials, tools, or apparatus therein referred to, by the *oath* of the *owner* of the materials, or of "any other credible witness or witnesses," before two or more justices of the peace, he shall forfeit the full value of the materials, and be liable in a penalty not exceeding £10, with costs as to the justices shall seem meet, which may be recovered by distress and sale. If there is no sufficient distress he may be imprisoned for a period not exceeding three calendar months, with or without hard labour.

(a) Chapter iii. pp. 95-98.

c. 56.

(b) 22 Geo. II. c. 27; 17 Geo. III.

(c) 6 & 7 Vict. c. 40.

If the said materials, tools, or apparatus are not returned to the owner within fourteen days after being demanded, unless some reasonable and sufficient cause prevents this being done, it is provided, by the third section, that the person so neglecting or delaying to return them shall be subject to the same liabilities as if he had embezzled them.

By section four it is enacted that persons knowingly purchasing or receiving embezzled materials or tools shall be deemed and adjudged guilty of a misdemeanor (*d*); and by the fifth section the same consequence will follow in the case of any one who shall sell or pawn, or offer to sell or pawn, any such articles knowing them to have been embezzled. The oath of the owner or of any other credible witness or witnesses is sufficient to convict. The punishment is provided for by the eleventh section.

The sixth section provides that, on proof on oath that there is just cause to suspect that any such materials, tools, or apparatus have been fraudulently sold, pawned, pledged, purloined, or embezzled, by the person to whom they were intrusted, or that they have been purchased, or received, or sold, or pawned, or offered to be so, by any person knowing them to have been purloined, or taken from, or received from some person fraudulently disposing thereof, any one justice may issue a warrant for apprehending such party; and if upon examination the charge shall be supported by evidence to raise "a strong presumption of guilt," the justice shall commit the person accused to the common gaol or house of correction, in order that he may be brought to trial at the next Petty Sessions, unless he enter into bail with two sureties to appear on the day to be fixed for his trial.

By the seventh section workmen neglecting to fulfil their engagements, and not finishing their work, or leaving without notice, are liable to a penalty not exceeding £2, and to pay any damage sustained by the materials intrusted to them, which may be recovered by distress and sale; failing which, imprisonment may follow for any term not exceeding two months, with or without hard labour (*e*).

(*d*) This term is defined by Blackstone as follows:—"A misdemeanor is in truth any crime less than felony, and the word is generally used in contradistinction to felony, and misdemeanors comprehend all indictable

offences which do not amount to felony, as perjury, battery, libels, conspiracies, and public nuisances." 4 Black. 5, 36.

(*e*) This section is superseded by 30 & 31 Vict. c. 141, Schedule I.

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Persons neglecting to return materials, tools, &c., within fourteen days, liable to same penalty.

Any person purchasing or receiving, selling, or pawning embezzled articles, held guilty of misdemeanor.

For penalty vide sect. 11.

On proof by oath that there is just cause to suspect that materials are fraudulently sold, justice may issue warrant to apprehend.

Penalties on workmen neglecting to fulfil engagements, not finishing work, or leaving without notice.

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and embez-
zlement by
workmen.

Power to
justice to
grant search
warrant.

Powers
given to
peace officers
to apprehend
suspected
persons.

The eighth section gives power to any justice of the peace, upon proof on oath that there is reasonable cause to suspect that any person has materials, tools, or apparatus in his possession, to grant a search warrant; and if any such property shall be found, the same, as well as the person in whose possession it has been found, are to be brought before the justice, and to be dealt with in the same way as provided for in the previous section.

Power is given by the ninth section to peace officers to apprehend any person whom they may reasonably suspect of having or carrying away materials or tools, after sun-setting and before sun-rising, and to lodge such person and property in a police office, in order that he may be brought before a justice; and if the party apprehended shall not produce the person entitled to dispose of the same from whom he bought or received the property, or shall not give a satisfactory account that it is honestly come by, he shall be deemed to be guilty of, and punished as for, a misdemeanor.

Penalties.

The tenth section provides for an adjournment of the trial on the accused finding bail.

The eleventh section deals with the punishment of a misdemeanor. Besides being deprived of the materials or tools which have been purloined, the party convicted shall forfeit any sum not exceeding £20 for each offence, with costs as may be determined by the justices, to be recovered by distress and sale as before mentioned; failing which the party may be imprisoned, with or without hard labour, for any period not exceeding four months.

Power given
to owners of
materials to
demand en-
trance to
shops of em-
ployees.

Section twelve points out how unclaimed property which has been seized is to be disposed of.

The thirteenth section gives power to owners of materials to demand entrance to the shop of any person employed by them at reasonable hours, for the purpose of inspecting the work intrusted to them; and refusal is punishable with a fine not exceeding 20s.

Power con-
ferred upon
justice to
issue war-
rant to ap-
prehend
workman
about to ab-
scond.

By the fourteenth section a justice may, upon complaint upon oath by a manufacturer, agent, or other person in his service, that any individual to whom materials or tools have been intrusted has absconded, or is about to abscond, issue a warrant for his apprehension. Under this warrant the materials or tools may be brought back.

(f) See section 7 of the Act.

The fifteenth section provides that the same penalty as that applicable to a person who shall not fulfil his engagement (*f*) will be incurred by any one receiving materials in a fictitious name.

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and embez-
zlement by
workmen.

By the sixteenth section the justice can issue his warrant to constables to take possession of property intrusted to any person committed for embezzlement.

Penalty for
using ficti-
tious name.
Remedies of
workmen for
payment of
wages.

The seventeenth section provides that if the wages or hire due to a workman by a manufacturer shall not from time to time be paid and discharged, the workman may bring a complaint before the justices, who may order payment of what is justly due, with costs for loss of time and recovering the same, to be recovered by distress and sale; and the justices may also authorize the workman to return his work in an unfinished state. There is no power, however, given to imprison the employer (*g*).

Section eighteen provides that frames not belonging to workmen are not liable to be seized for rent or debt owing by workmen. And the nineteenth section enacts that justices may order the restoration of frames so seized by the landlord or other persons.

Frames not
belonging to
workmen
not liable for
rent.

By the twentieth section a penalty not exceeding £2 can be awarded against any person who shall obliterate or alter on any frame, loom, or machine, the name of its owner without his authority; on failure to pay, the party convicted may be imprisoned for any term not exceeding two calendar months, with or without hard labour.

Penalties for
obliterating
names upon
frames,
looms, &c.

With a view to "the discouragement of frivolous and vexatious informations and prosecutions under this Act," power is given by the twenty-first section to award costs to the defendant; and in case it may have been attempted to charge a person with embezzlement, by delivering materials in a damp state so that the weight might be deficient when they were returned, the justice may award to the defendant a further sum, not exceeding £20, as compensation for the injury done.

Costs may be
given to de-
fendant in
frivolous
prosecutions.

Penalty on
giving de-
fendant ma-
terials in a
damp state.

The twenty-second section provides a mode of proceeding to enforce appearance; the twenty-third directs how the summons is to be served; the twenty-fourth limits the period within which prosecutions can be brought to six months; the twenty-fifth points out what justices are to have jurisdiction; the twenty-

Mode of com-
pelling ap-
pearance, &c.

(*g*) This section would seem to be one of those which ought properly to have been brought under the Master and Servant Act, 1867 (30 & 31 Vict. c. 141).

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6 & 7 Vict. c. 40. Fraud and embezzlement by workmen.

sixth deals with the application of penalties; the twenty-seventh provides as to the scale of imprisonment on summary convictions not specially provided for; while the twenty-eighth gives the form of conviction.

Appeal.

An appeal is given by the twenty-ninth section to the Quarter Sessions in certain cases, notice in writing of an intention to appeal being given to the justices at the time of conviction, and the party convicted entering into a recognizance with two sureties to appear at the same Sessions and try such appeal.

Prohibition of *certiorari*.

The thirtieth section provides that the proceedings are not to be quashed for want of form, nor to be removed by writ of *certiorari* (h) to any supreme court; and the thirty-first limits the period for bringing an action against any person for anything done in pursuance of the Act to two calendar months—and notice in writing of the action and cause thereof must be given to the defendant one calendar month before raising it. It is also provided that in any such action the defendant may plead the general issue (i). It is also provided that no plaintiff shall recover if tender of sufficient amends shall have been made before such action is brought, nor if a sufficient sum shall have been paid into court after the action is brought by or on behalf of the defendant. The plaintiff will also be bound to establish, not merely that damages have been suffered by him, but that the same were wilfully and maliciously caused by the defendant.

Limitation of actions for anything done under Act.

Consequence of tender of sufficient amends.

Plaintiff must establish malice.

The thirty-second section enacts that the Act is not to apply to offences committed before it was passed.

Act is not to extend to Scotland or Ireland.

The thirty-third section provides that the Act is not to extend to Scotland or Ireland. What the object of this limitation was does not appear. As previously observed, therefore, the Acts 22

(h) *Certiorari*, in English law, is equivalent to the bill of suspension of a conviction in Scotland; in other words, an appeal to the appropriate supreme courts of each country.

(i) This is a plea simply traversing or denying the allegations in the declaration. By r. 21, H. T. 1853, in every case in which a defendant shall plead the general issue, intending to give the special matter in evidence by virtue of an Act of Parliament, he shall insert in the margin of the

plea the words "by statute," together with the year of the reign in which the Act of Parliament was passed, and the chapter and section thereof, and shall specify whether such Act is public or private. Otherwise such plea shall be taken not to have been pleaded by virtue of an Act of Parliament. But see 6 & 7 Vict. c. 97, s. 3. Chit. Arch. Prac. by Frem. 254-274, 1262-1267, 1270-1292. Wharton's Law Lexicon, h-t.

Geo. II. c. 27, and 17 Geo. III. c. 56, are still in full force in Scotland, but not in Ireland.

The thirty-fourth section provides "that this Act shall not extend, or be construed to extend, to any manufacture, trade, occupation, or employment, except only the manufactures, trades, occupations, and employments following (that is to say), the manufacture of woollen, worsted, linen, cotton, flax, mohair, or silk materials, in, on, or by the stocking-frame, warp machine, or any other machine employed in the manufacture of frame-work, knitted, or looped fabrics; and every trade, occupation, operation, or employment whatsoever, connected with or incidental to the manufacture of stockings, gloves, and other articles of hosiery."

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zlement by
workmen.

Trades, &c.,
to which Act
applies.

The marginal rubrics of the remaining three clauses are "Construction of Terms," "Commencement of Act," and "Act may be amended this Session."

The Act which we have just considered is at present the ruling statute in England upon the matters therein contained.

By the Act 26 & 27 Vict. c. 103, servants taking corn or other food belonging to their masters contrary to their orders, for the purpose of feeding their horses or other animals, are not to be deemed guilty of felony; but on conviction before two justices of the peace may be imprisoned, with or without hard labour, for any time not exceeding three (now two, by 28 & 29 Vict. c. 127, *infra*) months, or shall pay a penalty not exceeding £5.

26 & 27
Vict. c. 103.

Servants
taking corn
or other food
belonging to
their
masters.

The above Act of 28 & 29 Vict. c. 127, passed upon 6th July, 1865, proceeds upon the preamble that it is expedient to amend the law relating to small penalties.

28 & 29
Vict. c. 127.

The first section provides that the Act may be cited for all purposes as "The Small Penalties Act, 1865."

Small Penal-
ties Act.

The second enacts that its provisions shall come into operation upon 1st August, 1865.

The third section defines the word penalty to be "any sum of money recoverable in a summary manner."

The fourth section provides that when, upon summary conviction, any offender may be adjudged to pay a penalty not exceeding five pounds, such offender, in case of non-payment thereof, may, without any warrant of distress, be committed to prison for any term not exceeding the period specified in the following scale, unless the penalty shall be sooner paid:—

Amount of
penalties
and terms of
imprison-
ment.

II. CRIMINAL AS AFFECT- ING WORK- MEN, &c. 28 & 29 Vict. c. 127. Small Penalties Act.	For any Penalty	The Imprisonment not to exceed
	Not exceeding ten shillings,	Seven days.
	Exceeding ten shillings and not exceeding one pound,	Fourteen days.
	Exceeding one pound but not exceeding two pounds,	One month.
	Exceeding two pounds but not exceeding five pounds,	Two months.

Power to impose hard labour not taken away. By the fifth section it is declared that nothing contained in the Act shall affect the power of imposing hard labour in addition to imprisonment, in cases where hard labour might, on non-payment of the penalty, have been so imposed if the Act in question had not been passed.

Cases to which Act applies. The sixth section provides that the Act shall apply to penalties, including costs, recoverable in a summary manner in pursuance of any Act of Parliament, whether passed before or after the commencement of this Act; and that all provisions of any Act of Parliament authorizing, in the case of non-payment of a penalty not exceeding five pounds, a longer term of imprisonment than is provided by this Act, shall be repealed.

Not to affect penalties relating to inland revenue. The seventh section declares that the Act shall not apply to any penalty imposed by any Act of Parliament relating to the inland revenue.

Act restricted to England. The eighth and last section provides that the Act shall only extend to England (j).

(j) Although this remarkably short and explicit Act applies to other matters as well as to those of an industrial nature, it has been thought useful to give it fully here. In Scotland, by the last statute upon this subject (27 & 28 Vict. c. 53, section 29), where an Act of Parliament gives power "to any sheriff, justice, or magistrate, to take cognizance of offences punishable by fine or imprisonment, without any

declaration being expressed or implied of the powers of such judge of police in relation to the punishment of such offences, it shall be lawful for such sheriff, justices or justices, or magistrate, to sentence the person convicted to pay a penalty not exceeding £5, or in the discretion of the judge to sentence him to be imprisoned for any period not exceeding sixty days."

CHAPTER IV.

III.—CIVIL LEGISLATION, AS AFFECTING MASTERS, SINCE 1824.

IN a previous chapter we referred to the operation of the Truck Acts prior to 1824. The Act now in force was passed on the 15th October, 1831, viz., 1 & 2 Will. IV. c. 37 (a), and is intituled "An Act to prohibit payment, in certain trades, of wages in goods or otherwise than in the current coin of the realm." Its leading provisions are, that no contract between masters and workmen is to contain any stipulation as to the manner in which wages shall be expended; that wages must be paid in coin, otherwise the workman can recover whatever part thereof has not been so paid (b). No set off can be pleaded by a master for goods supplied to the workman, even although he should have been paid his wages in terms of the Act, and have bought goods on credit at the store. This question arose under the previous Truck Act,

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AFFECTING
MASTERS.
1 & 2 Will.
IV. c. 37.
Truck Act.

Wages must
be paid in
coin.

(a) 1 & 2 Will. IV. c. 37.

(b) *Chawner v. Cummings*, 8 Q. B. 311. The plaintiff, a frame-work knitter, worked as a weaver of gloves for defendant, in frames provided by defendant, at an agreed gross price per dozen pairs. Defendant was a sub-contractor, furnishing the work by agreement to a master manufacturer, who found machinery and materials. Defendant settled with plaintiff weekly for the work done, deducting out of the gross price per dozen certain charges which were according to the known custom of the trade, viz., 1st, A frame rent per week; 2nd, a payment per week for use of defendant's premises to work in, standing room for the frame, defendant's trouble and loss of time in procuring materials and conveying them to plaintiff, defendant's responsibility to the master manufacturer under whom he contracted for the work, superintendence of the work, sorting the goods when made, and delivering them to the master manufacturer; 3rd,

payment to a boy for winding the yarn, and wear and tear of machinery; 4th, a penny per shilling on the net sum earned by plaintiff above fourteen shillings per week, as compensation to defendant for a percentage paid by him to the master manufacturer on the amount of goods manufactured by defendant for him, with machinery rented of him by defendant. There was no written contract between plaintiff and defendant. Held that the agreement to pay plaintiff's wages with these deductions was not a contract to pay part of such wages otherwise than in the current coin of the realm, within the 1st section, nor was a contract in writing, under section 23, necessary to legalize such deductions. Held, also, that there was not in this case any demise of a "tenement" within section 23, and *quære* whether there was a demise of anything at a rent therein reserved within that section. See also cases of *Archer v. James*, 1 Law Times Rep. N. S. 26; *S. C. Foat. and S.*

III. CIVIL AS
AFFECTING
MASTERS.

1 & 2 WILL
IV. c. 37.
Truck Act.

Penalties.

Levied by
distress.

Imprison-
ment for
three
months on
failure of
payment.

Workmen to
whom Act
applies.

12 Geo. I. c. 34, in a case which has been already referred to (H. Monteith & Co., *ante*, p. 126), where the workers of a cotton mill, who were always paid in money, of their own accord purchased goods at a store kept by the company—one of the workers who had been dismissed was entitled to a sum of £5 of wages, but he was due some £4 for goods supplied. It was held that there was no set off for such deduction. The present Truck Act, however, specially provides that no set off can be pleaded. The penalties on employers are, for a first offence, any sum not exceeding £10 nor less than £5; for a second, a sum not exceeding £20 nor less than £10; and in case of a third offence an employer will be guilty of a misdemeanor, and, being convicted, “shall be punished by fine only at the discretion of the court, so that the fines in any case shall not exceed £100.” Offences, when they do not amount to a misdemeanor, can be inquired into before any two justices having jurisdiction, and the penalties can be recovered by any person or persons suing for the same before the said justices. These can be levied by distress and sale; and in the event of there being no goods or chattels to distrain, or the penalties not being paid, the offender can be committed to prison for three calendar months. As to the application of the penalties, the informer may receive any sum not exceeding £20, and the rest of the penalty is to be paid to the rates of the county. All actions must be raised within three months after an offence is alleged to have been committed. This Act applies to artificers, workmen, or labourers, &c., employed in or about the making, casting, converting, or manufacturing of iron or steel, or any parts, branches, or processes thereof (c); or in or about the working or getting of any mines of coal (d), ironstone, limestone, salt-rock; or in or about the working or getting of stone, slate, or clay (e),

(c) In *Millard v. Kelly*, 32 Law Times, 123, a labourer employed in loading boats with iron was held to be within the Act.

(d) In *Bowers v. Loveken*, 25 L. J. Q. B. 371; S. C. 6; E. & B. 584, butty colliers who engaged to get coal at so much per yard, and were bound to work personally, and who did so work, were held within the Act, although they employed other workmen under them. See also *Sleeman v. Barrett*, 2 H. & C. 934; 10 Jur. N. S. 476; 33 L. J.

Exch. 153; 12 W. R. 411; 9 L. T. N. S. 834.

(e) A contractor to execute a railway cutting at so much per cubic yard, who employs men under him to assist, is not a *workman* or *labourer* within the true meaning of this Act, although he does a portion of the work himself. Where the earth removed is clay, *quære* whether a labourer engaged in the removal of such earth is a person “employed in or about the working or getting of clay,” within section 19.

or in the making or preparing of salt, bricks, tiles, or quarries; or in or about the making or manufacturing of any kind of nails, chains, rivets, anvils, vices, spades, shovels, screws, keys, locks, bolts, hinges, or any other articles or hardwares made of iron or steel, or of iron and steel combined, or of any plated articles of cutlery, or of any goods or wares made of brass, tin, lead, pewter, or other metal, or of any japanned goods or wares whatsoever; or in or about the making, spinning, throwing, twisting, doubling, winding, weaving, combing, knitting, bleaching, dyeing, printing, or otherwise preparing of any kinds of woollen, worsted yarn, stuff jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk manufactures whatsoever; or in or about any manufactures whatsoever, made of the last mentioned materials, whether the same be or be not mixed one with another; or in or about the making or otherwise preparing, ornamenting, or finishing of any glass, porcelain, china, or earthenware, or any parts, branches, or processes thereof, or any materials used in any of such last mentioned trades or employments; or in or about the making or preparing of bone, thread, silk, or cotton lace, or of lace made of any mixed materials. The Act does not extend to domestic servants, nor to servants in husbandry.

III. CIVIL AS
AFFECTING
MASTERS.
1 & 2 WILL.
IV. c. 87.
Truck Act.

No justice of the peace engaged in any of the trades above specified, or the father, son, or brother of any such justice, is allowed to act as a justice under the Act; and where in cities and boroughs or corporate towns the magistrates may be so disqualified, provision is made for the county justices, not themselves ineligible, hearing and determining any offence committed against the Act. While the legislature has been thus careful to protect the interests of the workman, it is specially provided that nothing contained in the Act shall be construed to prevent an employer from supplying any artificer with medicine or medical attendance; or with any fuel or materials, tools, or implements employed in his trade or occupation, if he is employed in mining; or any hay, corn, or other provender to be consumed by any horse or other beast of burden employed by him; nor from demising to any workman or labourer the whole or part of any tenement, at any rent to be therein reserved; nor from supplying or contracting to supply any victuals dressed or prepared under the roof of any

Exclusion of
justices en-
gaged in
trades speci-
fied in Act
from sitting
in judgment.

Act not to be
construed
to prevent
employers
from supply-
ing certain
articles.

Riley v. Warden, 2 Exch. 59; Shar- v. Barns, 26 L. J. Q. B. 82, 319; S.
mar v. Sandars, 13 C. B. 166; Ingram C. 7; E. & B. 115.

III. CIVIL AS
APPROVING
MASTERS.

1 & 2 WILL.
IV. c. 37.
Truck Act.

Advances
permitted to
be made for
contribu-
tions to
friendly
societies.

such employer, and there consumed by such artificer; nor from making any deductions from wages in respect of such rent, or of the articles before referred to, provided they do not exceed the real value thereof, but then only when such deductions are agreed to by a contract in writing, signed by the workmen. Employers are also permitted to advance to workmen money to be contributed by the latter to any friendly society or savings' bank duly established by law, or to make advances to them for their relief in sickness, or for the education of their children.

It is a very common practice for employers to give orders to grocers and others to furnish their workmen with goods, but this was stated to be illegal in the case of *Finlayson (f)*. Per Lord Benholm—"When payment of wages is attempted to be made by an employer by orders on a shop, whether he is or is not interested in the profits of such shop, as I read the Act of Parliament, such practices are illegal."

The Acts which have from time to time been passed with the view of regulating factories and mills are very numerous.

FACTORY
ACTS.

Several Acts have been passed for the appointment of inspectors for the preservation of the health, and for regulating the education and hours of work, of children employed in mills and factories. The most general of these Acts is the 7 & 8 Vict. c. 15.

3 & 4 WILL.
IV. c. 103.
Children and
young per-
sons.

By the 3 & 4 Will. IV. c. 103, persons under eighteen years of age are not allowed to work at *night*—that is, between half-past eight in the evening and half-past five in the morning; but this provision is not to extend to apprentices or others employed in certain processes, nor to children above thirteen employed in packing, nor to lace manufactories. Children whose hours of labour are limited to forty-eight weekly, require to attend a school chosen either by the parents or an inspector, and one penny in

(*f*) *Finlayson*, 1st July, 1864; *Scottish Jurist*, vol. xxxvi. p. 647.

As to the right of artificers to recover wages if not paid in the current coin, see case of *Weaver v. Floyd*, 21 L. J. Q. B. 151; and as to set-off, consult *Riley v. Warden*, 2 Exch. 59.

To constitute an offence against the Act, it is not necessary that the payment of wages in goods instead of money should be the result of any contract or understanding between the employer and the workmen; the mere payment is enough. *Wilson v. Cookson*, 13

C. B. N. S. 496; 9 Jur. N. S. 177; 32 L. J. M. C. 177; 11 W. R. 426; 8 L. T. N. S. 53.

The offence is complete where the note is given, although the goods were delivered out of the jurisdiction of the convicting justice. *Ashworth v. Drury*, 28 L. J. M. C.; 5 S. C. 32; *Law Times Rep.* 103.

Affidavits in support of a rule for a *certiorari* to remove a conviction under section 9 should be intitled "In the Queen's Bench" simply. *Ex parte Wallworth*, 4 D. & L. 403.

every shilling is to be deducted from the child's earnings for the expense thereof. It is unlawful to employ children unless they produce weekly to the factory-masters the schoolmaster's ticket of attendance. Inspectors may form regulations for the enforcement of the Act. The interior walls of mills and ceilings of rooms are to be lime-washed every year.

III. CIVIL AS
AFFECTING
MASTERS.

By the 7 Vict. c. 15, the inspector has power to enter a factory at any time by day or night when any person shall be employed therein, and to enter by day any place which he shall have reason to believe to be a factory, and any school in which children employed in factories are educated, and at all times to take with him into such factory the certifying surgeon of the district and a constable or peace officer whom he may need to assist him; and shall have power to examine, either alone or in the presence of any one he shall think fit, every person whom he shall find in a factory or in such a school, or whom he may have reason to believe to be or to have been employed in a factory within two months previously to the time when he shall require him to be examined touching any matter within the provisions of the Act, and the inspector may require such person to make a declaration of the truth of the matters respecting which he shall have been examined. The inspector is also to have the power to examine the register, certificates, notices, and other documents kept in pursuance of the Act, and every person who shall refuse to be examined, or refuse to sign his name, or affix his mark, to a declaration of the truth of the matters respecting which he shall have been examined, or who shall in any manner attempt to conceal, or otherwise prevent any child or other person from appearing before or being examined by an inspector, or who shall prevent or knowingly delay the admission of an inspector to any part of a factory or school, or shall prevent an inspector from pursuing his examinations, shall be deemed guilty of wilfully obstructing the inspector in the execution of the powers intrusted to him.

Factory
Acts, 7 Vict.
c. 15. Powers
of inspector.

All persons intending to occupy a factory are required to send, within one month, a written notice to the office of the factory inspectors, London, stating the name of the factory, the place, the post-office, the nature of the work, and amount of the moving power, and the name of the firm.

Persons
about to oc-
cupy a fac-
tory to send
notice to
factory in-
spector.

The inspectors are empowered to fix the surgeons' fees, and

III. CIVIL AS
AFFRONTING
MASTERS.

Factory
Acts, 7
Vict. c. 15.

Surgeons'
fees.

appoint the time of his visits, but so that the fee shall not exceed 1s. for each person where he examines more than one, with 6d. for each half mile over one mile from his residence, but the fees in no case to exceed 5s. for a visit, unless more than ten persons are examined, then 6d. each; where the residence of the surgeon is within one mile, the fee not to exceed 2s. 6d., except to examine more than five, then 6d. each; and not more than 6d. is to be taken for a certificate signed elsewhere than at the factory; the occupier of the factory to pay the fees, deducting the same from the wages of the person certified, but not exceeding in any one case the sum of 3d.: where an agreement has been made between an occupier and a certifying surgeon, such agreement to be instead of fees.

Painting and
lime-wash-
ing interiors.

By section 18 it is required that when the interiors of the factories are painted in oil, such paint shall be washed with hot water and soap at least once in fourteen months; and if not painted in oil, then to be lime-washed every fourteen months. No child or young person is to be employed in the wet spinning of hemp, flax, &c., unless means be employed for protecting them from being wetted, and where hot water is being used for the preventing the escape of steam upon the workers.

Explanation
of terms
"child" and
"factory."

The term "child" is explained to mean a person under the age of thirteen, and the term "young person" to mean a person of thirteen and under the age of eighteen. The term "factory" is to include any building or premises within the curtilage in which steam, water, or any other mechanical power is used to work machinery employed in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, or tow, either separately or mixed together, or mixed with any other material or any fabric made thereof.

Mill gearing
not to be
cleaned when
in motion.

Mill gearing is not to be cleaned while in motion. Machinery and wheel rails are to be securely guarded (g); and in all cases of

(g) The following case occurred in Ireland:—

A., an operative in a factory, sued B., the owner, for an injury alleged to have happened to him in the course of his employment, by reason of a certain shaft, in motion for the manufacturing process then going on, not having been securely fenced, pursuant to 7 & 8 Vict. c. 15. B. pleaded that it was the duty of A., at the time of the accident in question, to

put a certain belt upon one of the drums attached to the shaft, which were beyond reach of A. unless he raised himself above the level of the floor; that it was a positive and known rule of the factory not to put a belt on a drum by hand or without using the crutch; though A., in violation of the rule and express command, by means of a certain board insecurely placed at a height upon the floor, proceeded to

bodily injury the factory occupier or his agent shall give notice to the certifying surgeon, who is to send a copy of the same by post to the sub-inspector. The surgeon is then to examine into the nature and cause of the injury, and report the same, together with any other information relative to the accident, within twenty-four hours to the inspector of the district. For this investigation the surgeon will receive a fee of not more than 10s. nor less than 5s., as the inspector may direct.

III. CIVIL AS
AFFECTING
MASTERS.

Factory
Acts, 7
Vict. c. 15.

In the observance of time, the inspector is to approve in writing of some public clock, or clock exposed to public view, as the one by which the hours of work and attendance are to be regulated.

Children of eight years of age, but not under, who have obtained a surgeon's certificate, may be employed in factories. No child is to be employed more than *six hours and a-half or seven hours in any one day*; and no child employed in the forenoon shall work after one o'clock in the same or any other factory, nor for the recovery of lost time, save where children work only on alternate days, or as afterwards provided for in silk factories. In factories where the daily labour of young persons is restricted to ten hours, children may also be employed for ten hours on alternate days, provided the person having the benefit of such child's wages shall cause such child to attend some school for at least five hours on each week day preceding such day of employment: no child to be thus employed without a school certificate as directed in the schedule.

Employ-
ment of chil-
dren.

Sections 33 and 34 provide for the recovery of time lost by the stoppage of the machinery or other accident, which is not to exceed one hour in each day, except Saturday. Children and young persons may be employed at night for not more than five hours to recover time lost by drought or flood, but in every case previous notice must be given to the inspector, and a notice in a form directed fixed at the entrance of the factory. No child or young person is to be employed for any purpose whatever after half-past four on Saturday afternoon.

Recovery of
time lost by
stoppage of
machinery.

No child or young person shall be employed for more than five hours without an interval of at least thirty minutes for meal time, nor of less than one hour either at one time or at different

Meal times
and holi-
days.

put the belt with his hand, and without the aid of the crutch, upon the drum attached to the shaft, whereby, and not by the defendant's default, the in-

jury happened. Held, on demurrer, that the defence was a good answer to the action. *M'Cracken v. Dargan*, 1 Irish Jurist, New Series, 404, 2 B.

III. CIVIL AS
AFFECTING
MASTERS.

times before three o'clock. All young persons to have their meal times at the same period, and not to be allowed to remain in any room where manufacturing processes are carried on. Section 37 directs that at least eight half-holidays shall be given yearly in every factory, of which four are to be between 15th March and 1st October, previous notice thereof to be fixed at the entrance of the factory, in addition to Good Friday, Christmas Day, and the day of the Sacramental Fast in every Scottish parish.

Factory
Acts, 16 & 17
Vict. c. 104.

The 16 & 17 Vict. c. 104, makes further provision by enacting that no child (that is, a person under thirteen) shall be employed in any factory before six o'clock in the morning or after six o'clock in the evening of any day, and no child shall be employed on any Saturday after two o'clock in the afternoon. But children on any day but Saturday, from 30th September to 1st April, may for one month be employed between seven in the morning and seven in the evening. Notice is to be given to the inspector of such employment, and to be hung up in the factory. Children are not to be employed in recovering lost time after seven in the evening.

Employ-
ment of
children.

Penalties.

Penalties.—Any person convicted of having employed a child or young person without having obtained a certificate from a schoolmaster, shall, for every offence, incur a penalty of not less than 20s. nor more than £3, unless the offence be committed at night, then the penalty to be not less than 40s. nor more than £5. A parent or other person having a direct benefit from the child's or young person's labour, neglecting to cause their attendance at school as directed, will incur a penalty of not less than 5s. nor more than 20s. for each offence, unless it shall be proved that such offence was committed without their cognizance or connivance. The penalty for not painting or lime washing the walls as directed, to be not less than £3 nor more than £10, and £2 additional for every month's neglect after conviction. For not fencing machinery, a penalty of not less than £5 nor more than £20. Where any one suffers injury from the machinery not being properly fenced, or from any driving strap or band of which notice has been given by the inspector, the occupier to incur a penalty of not less than £10 nor more than £100, the whole or any part of such penalty to be applied for the benefit of the injured person, as the secretary of state shall determine; but the penalty not to be incurred if the complaint of

the inspector as to the danger had been previously heard and dismissed. The penalty for obstructing inspectors or sub-inspectors in the exercise of their duties is not to be less than £3 nor more than £10, except the obstruction be made to an examination of the factory at night, then to be not less than £20 nor more than £50. Every person convicted of giving or making use of false or counterfeit certificates, knowing them to be untrue, or wilfully conniving at making any false or counterfeited certificates, or any false entry in any register or other paper or notice, and every person signing a false declaration, or any proceedings, to be liable to a penalty of not less than £5 nor more than £20, or imprisonment for a term not more than six months. Penalties for other offences to be not less than £2 nor more than £5.

III. CIVIL AS
APPROVING
MASTERS.

Factory
Acta.

Penalties for
counterfeiting
certificates
and for false
declarations.

The powers of the inspectors, and the regulations in respect of the employment of children and women, are by 8 & 9 Vict. c. 29, extended to *calico printworks*.

Calico print-
works. 8 & 9
Vict. c. 29.

By 9 & 10 Vict. c. 40, it is enacted that no *ropery, ropewalk, or ropework*, in which machinery moved by steam, water, or other mechanical power is not used for draining or spinning the fibres of flax or hemp, but only for laying or twisting, or other process of preparing or finishing the cordage, and which has no internal communication with premises forming part of a mill or factory, except such as are necessary for the transmission of power, shall be deemed a mill or factory within the meaning of the Factory Acts, and applicable to children, young persons, or women in ropeworks.

9 & 10 Vict.
c. 40.
Ropeworks.

Reduction of Hours.—By 10 Vict. c. 29, the hours of labour in factories of persons under eighteen years of age are reduced from *twelve* (to which they were limited under 3 & 4 William IV. c. 103) to *eleven* in any one day from 1st July, 1847; and from 1st May, 1848, the hours of labour of persons under eighteen not to exceed *ten* in any one day, nor more than fifty-eight in any one week. These limitations of hours of labour extended to all *females* above the age of eighteen years.

10 Vict. c. 29.
Reduction of
hours.

See Ryder
& Mills. 19
Law J. (N.
S.) M. C. 82
where relays
held to be
legal.

By 13 & 14 Vict. c. 54, no young persons, and no young *females* above *eighteen*, shall be employed in any factory before six o'clock in the morning or after six o'clock in the evening of any day, except to recover lost time; and no young person or female above eighteen shall be employed in any factory either to recover lost time or for any other purpose on any *Saturday* after

13 & 14 Vict.
c. 54.
Employ-
ment of
young per-
sons or
females.

III. CIVIL AS
AFFECTING
MASTERS.

Factory
Acts.

two o'clock in the afternoon. Meal time to be between half-past seven in the morning and six in the evening, in lieu of half-past seven. Young persons or any female above eighteen are not to be employed in recovering lost time after seven in the evening. Sections 5 and 6 refer to the recovery of lost time, and to the employment of young persons and females from seven in the morning till seven in the evening, from 30th September to 1st April. Children above eleven years of age employed in winding and throwing silk may be employed as "young persons" under the Act. Young persons and females above eighteen employed during meal hours are held to be employed contrary the Act.

7 Vict. c. 15,
amended by
20 Vict. c. 38.

Millgearing.

The 7 Vict. c. 15, is amended by 19 & 20 Vict. c. 38, which explains that, so far as it refers to the *mill gearing*, it shall apply only to those parts with which children and young persons and women are liable to come in contact either in passing or in their ordinary occupation in the factory. The penalty is £20 or not less than £5 for omitting to fence off machinery after notice from the inspector.

24 & 25 Vict.
c. 117.
Lace factor-
ies.

By an Act of 1861, the 24 & 25 Vict. c. 117, the provisions of the above Acts are extended to *lace factories*, and from 1st August, 1862, they are to apply, with exceptions, to the employment of females, young persons, youths, and children in lace factories. In a lace factory youths between the age of sixteen and eighteen may be employed between 4 a.m. and 10 p.m., but not above nine hours between these hours, nor both earlier than six in the morning and later than six in the evening on the same day, nor both later than six in the evening of any day, and earlier than six o'clock in the morning of the next succeeding day (s. 2). The agent or workman may be summoned before a justice for acting contrary to the statute without the knowledge of the owner or hirer of a mechanic (s. 3). Provisions of the Factory Acts, so far as they relate to *lost time*, are not to apply to lace factories, neither are the said Acts relating to the *fencing* off of *machinery* to apply to such factories.

Provisions as
to lost time
and as to
fencing of
machinery
are not to
apply.

27 & 28 Vict.
c. 48,
extends
Acts to man-
ufactures
of earthen-
ware, &c.

Generally, by 27 & 28 Vict. c. 48, these Acts are extended to manufactories of earthenware, except brick and tiles, not being ornamental tiles, and to the manufacture of lucifer matches, percussion caps; cartridges, and the employment of paper staining and fustian cutting. By section 4 every factory to which the Act applies is to be kept in a cleanly state, and to be ventilated in

such a way as to render harmless, so far as practicable, any gases, dust, or other impurities generated in the processes that may be injurious to health. The penalty on neglect by the occupier does not exceed £10, nor is it to be less than £3; but the court having jurisdiction may, instead of inflicting a penalty, give an order directing the occupier within a certain time to make the sanitary alterations required by the Act.

A recent statute as to this matter is the 30 & 31 Vict. c. 103, passed in 1867, which extends the previous Acts to blast furnaces and metallic works, paper, glass, and tobacco manufactories, letterpress printing and bookbinding, and generally to any manufactory in which fifty or more persons are employed; and every part of a factory is deemed to be such, except such part as is exclusively used as a dwelling. By section 12, fifty or more persons are held to constitute a factory. No child under eleven years of age is to be employed in the metal trade, nor any female in a glass factory in which melting or annealing glass is carried on; and meals are not to be taken in certain parts of a glass factory.

The preceding Act applies only to large establishments, where fifty or more persons are employed, but 30 & 31 Vict. c. 146, extends protection to young persons in smaller establishments; and makes provision for the employment of a fan or other means for preventing the inhalation of dirt by workmen in process of grinding. The Act does not extend to factories subject to the jurisdiction of the inspector of factories, nor to bakehouses under the Act of 1863.

1. By section 6 no child under the age of eight years is to be employed in any handicraft, nor on any one day for more than six and a-half hours, and such employment shall take place between the hours of six in the morning and eight at night. 2. No young persons or women shall be employed during any period of twenty-four hours for more than twelve hours, with intervening periods for taking meals and rest, amounting in the whole to not less than one hour and a-half; and such employment shall take place only between the hours of five in the morning and nine at night. 3. No such person shall be employed on Sunday, or after two o'clock on Saturday afternoon, except in cases where not more than five persons are employed in the same establishment, and where such employment consists in making articles to be sold

III. CIVIL AS
AFFECTING
MASTERS.

30 & 31 Vict.
c. 103, extends
Acts to blast
furnaces,
metallic
works, paper
manufac-
tures, letter-
press print-
ing, book-
binding, &c.

30 & 31 Vict.
c. 146.

Children
under eight
years of age.

III. CIVIL AS
AFFECTING
MASTERS.

Children
under eleven
years of age.

by retail on the premises, or in repairing articles of a like nature to those sold by retail. 4. No child under the age of eleven years shall be employed in grinding in the metal trades or in fustian cutting, and there is a penalty fixed of £3 on the employer and £1 on the parent conniving at such employment (*h*).

MINES AND COLLIERIES.

Mines and
collieries.
5 and 6 Vict.
c. 99.

Employ-
ment of
females pro-
hibited, and
males under
ten years
not allowed
to be ap-
prenticed.

By the 5 & 6 Vict. c. 99, the employment of females in any mine or colliery was prohibited after 1st March, 1843. From the same date no male under ten years of age was allowed to be apprenticed in any mine or colliery, nor any one to be appointed under ten years of age, nor for longer than eight years except in the cases of masons, joiners, engine wrights, &c., who are occasionally employed underground. Every owner, body, or company employing persons contrary to the Act, is liable to a penalty of not less than £5 nor more than £10 for each offence. Parents or guardians misrepresenting the age of children so employed may be fined 40s., and the employer's fine may be remitted if incurred through such misrepresentation. These regulations, however, are not to apply to persons employed about any mine or colliery if the employment is above ground.

Vertical or
other shafts.

Where there are vertical or other shafts, no steam or other engine is to be trusted to the care of a person below the age of fifteen, under a penalty of not more than £50 nor less than £20. In the case of a windlass or gin worked by a horse or other animal, the driver is to be considered as the person in charge.

Wages not
to be paid at
taverns, and
may be re-
coverable if
so paid.

Proprietors of mines and collieries are forbidden to pay workmen their wages at any tavern or public house or in any building connected therewith. Wages so paid are to be recover-

(*h*) Proceedings under the Acts of Parliament regulating, or otherwise relating to, the labour of *children* and young persons in mills and factories, are exempt from the Act 11 & 12 Vict. c. 43 (Jervis' Act), intituled "An Act to facilitate the performance of the duties of justices of the peace out of session within England and Wales with respect to summary convictions and orders." Paley on Summary Convictions, p. 58. Mr. Archbold, in his second edition of Jervis' Acts, p. 187 n., says, "As to convictions under

the Factory Acts, the whole law in this respect is now usually administered by the factory inspectors, who have a concurrent jurisdiction in such matters with the justices of the peace; and those factory inspectors were so used to their own mode of proceeding, and (as they conceived) had got it into such admirable working order, that they begged that their proceedings might be excluded from the operation of this Act, and it was conceded to them."

able as if not paid, and persons so paying are subjected to a penalty of not more than £10 nor less than £5 for each offence. Any agent, servant, or contractor may be summoned and fined in lieu of the owner, if proved to have so acted without the knowledge of the owner.

III. CIVIL AS AFFECTING MASTERS.

Mines and collieries.

By the 13 & 14 Vict. c. 100, the secretary of state is authorized to appoint in Britain one or more inspectors of coal mines to visit at reasonable hours, night or day, so as not to obstruct the working of the colliery, its works, machinery, ventilation, and mode of lighting, and all other matters relating to the safety of the persons employed about the same. The Act is amended by the 18 & 19 Vict. c. 108, and power is given to the secretary to remove the inspector; but by section 3 no land agent, manager, or agent of a mine is to act as an inspector. The following general rules are to be observed in all coal mines:—

13 & 14 Vict. c. 100: appointment of inspectors; amended by 18 & 19 Vict. c. 108.

I. An adequate amount of ventilation shall be constantly produced at all collieries to dilute and render harmless all noxious gases, to such an extent as that the working places of the pit and levels of such collieries shall, under ordinary circumstances, be in a fit state for working. II. Every shaft or pit out of use, or used only as an air pit, shall be securely fenced. III. Every working and pumping pit or shaft shall be properly fenced when not at work. IV. Every working and pumping pit or shaft, when the natural strata, under ordinary circumstances, are not safe, shall be provided with some proper means of signalling from the bottom of the shaft to the surface, and from the surface to the bottom of the shaft. V. A proper indicator to show the position of the load in the pit or shaft, and also an adequate break, shall be attached to every machine worked by steam or water power, and for lowering or raising persons. VI. Every steam boiler shall be provided with proper steam-gauge, water-gauge, and safety-valve.

Ventilation.

Shafts to be properly fenced.

Signalling.

Indicator.

Gauges.

Special rules are likewise to be framed for every colliery, subject to the approval of the secretary of state: such rules, both general and special, are to be painted or printed, and shown in some conspicuous part of the colliery, and a copy given to every person employed therein. The inspectors are to see that these rules are complied with, or to inform against the owners or managers for neglect; and owners and managers of mines are to produce to them maps or plans of the mines, or, if not produced,

Special rules.

III. CIVIL AS
AFFECTING
MASTERS.

Mines and
collieries.

5 & 6 Vict.
c. 99, and 19
Vict. c. 108,
amended by
23 & 24
Vict. c. 151.

Inspection
now applies
to mines of
ironstone of
the coal
measures.

Nobody un-
der twelve
years to be
employed.

Notice of
accidents.

Obstructing
inspector.

Previous
Act amend-
ed by 25 &
26 Vict. c. 79.

they may require them to be made. Notice of accidents in mines is to be given to the secretary of state or to the lord advocate of Scotland, with the probable cause thereof, within twenty-four hours of their occurrence, under a penalty of £10 or not above £20.

The 5 & 6 Vict. c. 99, and 19 Vict. c. 108, are amended by 23 & 24 Vict. c. 151, and the provisions for inspection now applicable to coal mines are only extended to mines of *ironstone of the coal measures*. After 1st July, 1861, no boy under twelve years of age is to be employed in any mine or colliery, nor any boy to work therein other than such as at the passing of the Act (28th August, 1860) had attained the age of ten years, or had previously been so employed. There is an exception for boys between ten and twelve who have certificates as to education and school attendance. There is a penalty of £10 or not under £5, on granters of false certificates. By section 4 steam engines in certain cases are not to be under the charge of persons under eighteen years of age. Sections 6 and 16 make provisions for inspection and regulation of coal and iron mines, and prescribe general and special rules for the purpose. By section 17 the inspector is to give notice of the sources of danger not provided for by the rules. Owners are to produce to the inspector maps or plans of mines. Notice of accidents is to be given to the secretary of state. Neglect of rules, on conviction before two justices or a sheriff in Scotland, will subject to a penalty not exceeding £2, or imprisonment without hard labour for three months—section 22. For obstructing the inspector there is a penalty not above £10. Pulling down or defacing notices, penalty 40s. or under. Wages are to be paid in money—section 28.

The 25 & 26 Vict. c. 79, amends the last-mentioned Act, and is intended to prohibit the use of *single shafts* in iron and coal mines. But it does not apply to opening a new mine for the purpose of searching for or proving minerals, or to any working for making a communication between two or more shafts, so long as not more than twenty persons are employed at any one time in the mine or working. Owners may appeal to arbitration in case of exhausted mines, or inability to provide an additional shaft or outlet as the Act requires.

It has been held that a conviction by a sheriff in Scotland,

under the Act 23 & 24 Vict., was competent only to be reviewed in the Court of Session (i). But the court of appeal is now regulated by the Summary Procedure Act, 1864.

III. CIVIL AS
AFFECTING
MASTERS.

It was held by the sheriff at Airdrie, in an action under the Summary Procedure Act, that a CONTRACTOR to drive mines was not liable as an OWNER of a mine, in a penalty for neglect of the rules for regulating mines (j). In England the *coal trade* is regulated by the statutes 7 Geo. II. c. 35; 31 Geo. III. c. 36; 52 Geo. III. c. 9; 5 & 6 Will. IV. c. 63; 6 & 7 Will. IV. c. 109; and in London by the Act 1 & 2 Will. IV. c. 76; extended by 1 & 2 Vict. c. 101, and 6 & 7 Vict. c. 2.

Acts regu-
lating coal
trade in
England.

BLEACHING AND DYEWORKS.

These works, by 23 & 24 Vict. c. 78, are placed under the regulations of the Factory Acts to remedy the practice of keeping females, young persons, and children at work during the night, and an unreasonable number of hours during the day. It is made unlawful to employ females and young persons in bleaching or dyeing works after half-past four o'clock in the afternoon of any Saturday, or for more than twelve hours on any other day, except in bleaching works by the open air process. There is an exception in favour of females above eighteen and young persons to 1st August, 1862. After that period, females and young persons may be employed until half-past four o'clock on Saturdays, and until eight o'clock on other days, but not so as to exceed in any period of six months and part of another month the total number of hours allowed by the Act.

Bleaching
and dye-
works, 23
Vict. c. 78.

Unlawful to
employ
females or
young per-
sons after
half-past
four o'clock
on Saturdays.

It being the practice of a few occupiers of bleachfields, and works in which bleaching by the open air process is the only operation, to evade Acts prohibiting the unnecessary employment of females during the night, the 25 Vict. c. 8 makes it unlawful in bleaching, dyeing, or finishing of any yarn or cloth of cotton, silk, wool, or

25 Vict. c. 8
prohibits
employment
of females at
night.

(i) Macdonald, 20th January, 1862; 34 Scottish Jurist, 156.

(j) Shedden, Scottish Law Magazine, 8th December, 1864, vol. iv. p. 4. See case of Underhill v. Longridge, 29 L. J. M. C. 65, where there was a conviction under section 9 of 18 & 19 Vict. c. 108, for not giving notice to inspector; also Knowles v. Dickinson,

2 El. and El. 705, 29 L. J. M. C. 135, for not ventilating mine, under section 4; R. v. Mainwaring, El. Bl. and El. 474, L. J. M. C. 278, limitation of time for the recovery of penalties, section 14. See also Howell v. Wynne, 15 C. B. N. S. 3, and R. v. Handly, 9 L. T. N. S. 827.

III. CIVIL AS
AFFECTING
MASTERS.

27 & 28
Vict. c. 98,
extends
previous
Acts to cloth-
lappers, &c.

27 & 28
Vict. c. 98.

26 & 27
Vict. c. 38,
extends re-
gulations to
females em-
ployed in cal-
endering or
finishing of
yarn.

flax, to employ females and children, or any of them, from eight of the clock in the evening to six of the clock in the morning, except to recover lost time, as provided by 23 & 24 Vict. c. 78.

Previous Acts are extended by 27 & 28 Vict. c. 98, and apply to women, young persons, and children, employed for hire in any premises in the processes of finishing, hooking, or lapping, or of making up and packing any yarn or cloth of cotton, wool, silk, or flax, or any of them, or any mixture of them, or any yarn or cloth of any other material or materials, or any of such processes; and in the construction of the Bleaching Acts, "bleaching works" and "dyeing works" and "factory" are to include any premises in which the said processes are carried on. But the Act is not to apply to premises in which all the persons are males above the age of fourteen years; provided also that in the premises within the Act the owner may from time to time, by notice in writing to the inspector, elect what shall be the working hours in such premises, so that the total number of hours during which females, young persons, and children may be lawfully employed in any one day or week, according to the Act, be not exceeded, and so as the working hours elected be between six in the morning and six in the evening, or seven in the morning and seven in the evening, or eight in the morning and eight in the evening.

The regulations relative to bleaching and dyeing were extended in 1863, by 26 & 27 Vict. c. 38, and made applicable to females and young persons employed in any process previous to packing in the *calendering* or *finishing* of any yarn of cotton, wool, silk, or flax in which steam work or other mechanical power is employed. The Act does not extend to buildings defined by the Factory Act, 7 Vict. c. 15.

REGULATIONS OF BAKEHOUSES.

Bakehouses.
26 & 27
Vict. c. 40.

Limitation
of hours of
labour of
young per-
sons.

The 26 & 27 Vict. c. 40, limits the hours of labour of young persons employed in bakehouses, and makes regulations in respect of cleanliness and ventilation. The local authority is defined by section 2, and a bakehouse includes any place in which bread, biscuits, or confectionery is baked, from the baking and selling of which a profit is derived. By section 3, no person under the age of eighteen years is to be employed in any bakehouse between the hours of nine o'clock at night and five o'clock

in the morning. The penalty on the occupier or person in possession for a first offence not exceeding £2; a second offence, £5; third offence, for each day, not exceeding £10. In every city or place with a population of above 5000, the inside walls and ceiling, with the passages and staircases leading thereto, are either to be painted with oil or lime-washed; if painted, to be three coats of paint, renewed at least once in every seven years, and washed with hot water and soap every six months; if lime-washed, the washing to be renewed every six months. Every bakehouse is to be kept cleanly, with effective ventilation, and free from the effluvium of any drain, privy, or other nuisance. Penalty not above £5. The court, under the Act, may direct alteration in lieu of or in addition to penalty. Sleeping places must be separated from the bakehouse by partitions from the floor to the ceiling, with external glazed window, made to open for ventilation—section 5. The local authority is to enforce provisions by an officer of health, inspector of nuisances, or other officer appointed by them, who may enter and inspect during baking hours. Refusing admission or obstructing examination entails a penalty not exceeding £20. Entry may be enforced by inspector having warrant of a justice, and being accompanied by a police constable. Expenses are to be defrayed out of the rates levied under Nuisances Removal Acts.

III. CIVIL AS
AFFECTING
MASTERS.

Bakehouses.
26 & 27
Vict. c. 40.

Lime-wash-
ing, &c.

CHAPTER V.

IV.—CRIMINAL LEGISLATION, AS AFFECTING MASTERS, SINCE 1824.

AKIN to the Acts which have just been considered is the statute 14 Vict. c. 11, intituled "An Act for the better protection of persons under the care and control of others, as apprentices and servants, and to enable the guardians and overseers of the poor to institute and conduct prosecutions in certain cases (a). This Act was passed in consequence, as it is said, of the great scandal caused by the case of the Sloanes, indicted in February, 1851, on the charge of starving and ill treating their servant girl.

14 Vict. c. 11.

Case of the Sloanes in Feb., 1851.

Masters and mistresses guilty of refusing or neglecting to supply necessary food, may be imprisoned with hard labour for three years.

Guardians and overseers to make visitations.

May be required to prosecute.

Necessity for public prosecutor in England.

By the first section it is provided that if any master or mistress shall refuse or neglect to supply necessary food to apprentices or servants, or shall unlawfully assault them, they shall be guilty of a misdemeanor; and being convicted thereof shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding three years.

There are various other clauses, providing that young persons hired out from workhouses, or bound as pauper apprentices, shall be visited periodically by the officer of guardians or overseers, and as to young persons hired or bound to masters or mistresses residing at a distance from unions or parishes, and binding such guardians or overseers to prosecute in certain cases; and the justices are empowered to require these functionaries to prosecute, and to pay the costs reasonably and properly incurred by them therein.

In referring to the Act 32 Geo. III. c. 57 (b), passed in 1792, intituled "an Act for the further regulation of parish apprentices," it was pointed out that, by the eleventh section thereof, the justices could compel the parish officers to enter into recognizance to prosecute masters for ill treatment of apprentices. This mode of redressing public wrongs, however, is exceedingly unsatisfactory; and it is matter of surprise that long ere now there has not been established in England a public prosecutor upon the system which has worked so admirably in Scotland.

(a) 14 Vict. c. 11.

(b) 32 Geo. III. c. 57. *Ante*, p. 131.

CHAPTER VI.

V.—CIVIL LEGISLATION RECIPROCALLY AFFECTING MASTERS, WORKMEN, SERVANTS, AND APPRENTICES.

At and previous to the passing of the 10 Geo. IV. c. 52, viz., June, 1829, and until August, 1867, the Act which regulated the civil relations between masters and servants was the 4 Geo. IV. c. 34. It was evident, however, that the country would not brook much longer the continuance of an Act upon the statute book, which only visited upon *one* of the parties to a private contract, a breach of its obligations with the penalty ordinarily awarded to the commission of a crime. Public opinion had come to be decidedly unfavourable to a statute which placed the British workman charged with the mere violation of an ordinary right, exactly in the position of the ruffian who committed a penal wrong. This disfavour was not confined to the Act, but extended itself to the tribunal which so rigidly carried its tyrannical provisions into execution. In consequence of this state of feeling, the government were obliged, in April, 1865, to appoint a select committee of the House of Commons to inquire into the state of the law with regard to contracts of service between master and servant, and as to the expediency of amending the same. That committee consisted of seventeen members. They proceeded to take evidence upon 2nd June, 1865, and examined Mr. John Strahan, solicitor, Glasgow, and Mr. Sheriff Barclay, of Perth. Upon the 15th of that month, however, they gave in a report stating, that being unable to complete the inquiry during that session, they recommended that a committee should be appointed next session to consider the subject. Accordingly, a new committee was appointed upon 22nd March, 1866, the chairman of which was Lord Elcho. This committee examined several witnesses (a).

Select committee of House of Commons appointed in 1865.

(a) The following parties were examined as witnesses:—George Newton, potter, Glasgow; Alexander Campbell, editor of the *Glasgow Sentinel*; William Dronsfield, manager for Messrs. Loxley, printers, &c., Shef-

The inquiry was extensive and minute, and the recorded evidence occupies 132 double column folio pages of print. There is an abstract of it given at the end of the minutes, from which we make a few extracts under the following heads:—

- I. Inequality and Hardship.
- II. Criminal Offence (Breach of Contract).
- III. Equality of Treatment.
- IV. Evidence Opposed to Justices of the Peace as the Tribunal of Adjudication in cases of Breach of Contract.
- V. Evidence in Defence of the Jurisdiction of the Justices.
- VI. Suggestions for an Improvement of the Existing Tribunal, or for Adjudication by a New Court.

**ANALYSIS OF
EVIDENCE.**

I. INEQUALITY AND HARDSHIP.—“Primary object of the present movement to remove the existing inequality, and to put the employer and the employed before the law in the same condition. Newton, 8, 10, 130, 197, 203; Campbell, 314. Inequality in workmen being liable to criminal punishment whilst masters are only liable to civil punishment for breach of contract. Newton, 11, 16. Particular cases cited as showing the hardship and injustice to workmen under the existing unequal law; illustration in witness' own case. *Ib.* 17, 39.”

“Witness cites sundry cases in proof of the harsh, unequal, and unjust operation of the Act 4 Geo. IV. c. 34, as regards breach of contract of service on the part of workmen; these cases occur in almost all trades. Campbell, 296, 311. Concurrence of witness in the evidence generally of Mr. Newton, as to the inequality of the present system and the amendments required. *Ib.* 312, 315.”

**I. Inequality
and hard-
ship.**

“Evidence as to the inequality of the law in the case of miners. Macdonald, 467, et seq. Very disadvantageous position of the miners as compared with their employers, under the present law of master and servant. Normansell, 1003, 1004. Objection to the Act 4 Geo. IV. on account of its unequal and harsh operation in regard to workmen as compared with masters. Williams, 1062, 1065.”

“Information relative to the present state of the law as regards the relation of the master to his servant, and the power of the latter to proceed against and punish him. Roberts, 1619, 1635. Great inequality as regards breaches of contract in the servant being liable to imprisonment, whilst for analogous acts

field; Colin Steele, moulder, Glasgow; John Normansell, secretary to Miners' Association, South Yorkshire; Charles Williams, secretary to United Trades' Committee, Liverpool; Alexander Macdonald, agent for miners, Scotland, Glasgow; William Evans, editor of the *Potteries Examiner*, Hanley Potteries; Archibald Hood, colliery owner, Midlothian; Joseph Dickinson, inspector of mines, Manchester; William

Prowting Roberts, solicitor, Manchester; Alfred Mault, secretary to the General Builders' Society, Birmingham; J. E. Davis, stipendiary magistrate, Stoke-upon-Trent; John Lancaster, chairman of Wigan Coal and Iron Company; William Burns, solicitor, Glasgow; John Watson, Ormiston, manager, Shotts Iron Company; and Thomas Emmerson Foster, mining engineer, Newcastle.

the master is not so liable. Ib. 1636, 1648. Circumstance of the laws relating to master and servant being all derived from times when the position of workmen in this country was very different from what it now is. Ib. 1651, 1654. Strong feeling on the part of working men against the inequality of the law. Ib. 1658, 1659. Contrast between the slight redress by means of a small fine against the master, whilst the latter may visit the workman with three months' imprisonment and hard labour. Ib. 1774, 1785, 2238."

"Explanation as to witness having cited only two cases in illustration of the oppressive character of the present law, and as to his not being prepared with any case since 1850. Odger, 1818, 1827, 1862, 1872, 1935, 1937. Strong objection to the criminal procedure and the power of imprisonment as regards workmen, whilst the masters can only be dealt with for a civil offence. Odger, 1834, 1840, 1841. Bad feeling created in the workmen by the knowledge that they can be treated in an unequal and oppressive manner. Ib. 1840, 1856, 1861, 1951, 1952. Gain to masters as well as to men if the former would declare against the inequality of the Act. Ib. 1854, 1944. Opinion that the present law is too harsh and unequal. Dickinson, 2151."

"Argument opposed to the view that there is a great inequality under the present system of punishment. Hood, 1321, 1331, 1337, 1345; Burns, 2346, 2350, 2379, 2380, 2386. Belief that servants generally are quite aware of the state of the law, and that no bad feeling arises in consequence of the law towards their employers. Burns, 2353, 2355. Occurrence of some cases of hardship, so that the masters are only too willing to see a modification of the more stringent provisions of the Act. Ib. 2356."

II. CRIMINAL OFFENCE (BREACH OF CONTRACT).—"Inequality under the Act 4 Geo. IV. c. 34, inasmuch as a breach of contract on the part of a workman renders him liable to a criminal prosecution, whilst a breach of contract on the part of the master renders him liable only to a civil action for damages. Newton, 11, 16. Exceptional cases, in which it might be proper in the judge still to treat as a crime a breach of duty on the part of a servant. Difficulty in defining these cases. Ib. 67, 68, 72, 76, 83, 86, 175, 193, 328. Limited number of trades or processes in which a sudden and wilful breach of contract of service by a workman would seriously injure his fellow-workmen, as well as the property of his employer. Approval of severe punishment in such cases. Ib. 72, 76, 82, 86. Feeling of the working classes that all proceedings under the Act 4 Geo. IV. are of a criminal character. Ib. 166."

"Statement that it is not necessary to prove that an injury has been done in order to constitute a breach of contract a criminal offence. Newton, 255, 258. Conclusion as to its not being compulsory upon the justices under the Act of George IV. to send the offender to prison. Ib. 269, 277. Witness does not propose to interfere in any way with the law as to wilful damage of property or embezzlement of materials by workmen, and confines his suggestions to an amendment of the law of breach of contract. Ib. 278, 282."

"Approval of criminal jurisdiction and of imprisonment in exceptional or aggravated cases of breach of contract by workmen. Dronsfield, 811, 829; Hood, 1321, 1331, 1337, 1345; Lancaster, 1436, 1440, 1444, 1447; Foster,

ANALYSIS OF
EVIDENCE.I. Inequality
and hard-
ships.II. Criminal
offence
(breach of
contract).

ANALYSIS OF EVIDENCE. 1555, 1560, 1583, 1603; Matthews, 2454, 2459. Expediency of doing away with the criminal procedure if possible. Approval of its application in exceptional cases, where a workman by a breach of contract may cause much injury both to his fellow-workmen and his employers. Williams, 1062, 1074, 1093, 1095, 1115, 1121, 1141; Winters, 1195, 1206, 1215, 1220. Dissatisfaction of the workmen in being treated criminally for breach of contracts, whilst the masters can only be proceeded against civilly. Evans, 1400, 1401, 1411."

"Effect of the present law in preventing men from suddenly leaving their employment. Lancaster, 1489. Absence of any strong feeling among the workmen in witness' district against the criminal procedure under the Act. Ib. 1490."

"Evidence strongly opposed to the criminal character of the law of breach of contract in the case of workmen. Roberts, 1619, et seq. Decided objection to treating exceptionally and criminally any case of breach of contract, though attended with peculiarly serious effects, and being dangerous to life and property. Ib. 1649, 1651, 1695, 1703."

II. Criminal offence (breach of contract).

"Opinion that the penal clauses of the Act relating to breach of contract should be entirely swept away. Odger, 1805. Vague definition in the Act as to the conduct for which the workman is to be liable for misdemeanor. Ib. 1854, 1855. Objection to criminal procedure even in exceptional cases of breach of contract by workmen, to the injury of their fellow-workmen as well as to their masters. Ib. 1876, 1888, 1982, 1986. Effect of the criminal jurisdiction as regards breach of contract by workmen in creating a hostile and almost savage feeling, and in leading to strikes rather than in deterring from them. Roberts, 2238."

"Argument that cases of breach of contract should be dealt with apart from the element of loss and damage, and that it is necessary to retain the primitive character of the remedy against the servant, as by a merely civil remedy the loss would not be recoverable at all. Burns, 2346, 2350, 2379, 2380, 2386."

III. Equality of treatment.

III. EQUALITY OF TREATMENT.—"Concurrence in the view that the workman should be placed on an equality with the master by being made liable only to civil consequences for breach of contract. Newton, 8, 10, 15, 46, 53, 62, 68; Dronsfield, 796, 798; Normansell, 947; Williams, 1093, 1094, 1115; Roberts, 1647, et seq., 2218, 2232; Odger, 1914. Chief object of the present movement to place the workman on an equality with his employer as regards breaches of contract of service. Newton, 8, 10, 130, 197, 200; Campbell, 314. Equality of punishment by the infliction of a fine upon the workman as upon the master. Question hereon in the event of the workman not being able to pay the fine. Newton, 69, 70, 116, 121, 203, 204; Odger, 1938, 1943. Expediency of misdemeanors under the Act being equally applicable to masters as to men, criminal punishment being, however, undesirable in either case save for very exceptional breaches of contract. Odger, 1930, 1938, 2008, 2019. Approval of imprisonment for both master and man for non-payment of fines. Burns, 2352, 2359, 2370, 2371; Matthews, 2519."

IV. Evidence opposed to the justice of peace jurisdiction.

IV. EVIDENCE OPPOSED TO THE JUSTICES OF THE PEACE AS THE TRIBUNAL OF ADJUDICATION IN CASES OF BREACH OF CONTRACT.—"Objection to the proceedings being carried before justices of the peace, as these are of the master class,

and have a sympathy with the employers. Newton, 13, 54, 58, 87, 91, 145, 156, 264, 268. Several grounds for objecting to the justices as the tribunal for deciding between master and men in Sheffield. Campbell, 315, 322; Dronsfield, 829, 834, 847, 854, 860, 864. Evidence as to the unfitness of justices of the peace, more especially in Lanarkshire, as the tribunal to decide between masters and men; strong feeling of miners in this matter. Macdonald, 538, 543, 550, 559. Good grounds for the feeling of the men that the law is not properly or impartially administered by the justices. Steele, 734, 741."

"Objection to the justices of the peace as the tribunal to decide between masters and men, on account of their sympathies being with the former. Normansell, 978, 985. Disapproval of cases being adjudicated upon by magistrates who are themselves employers—practice herein in Liverpool. Williams, 1165, 1174."

"Great failure of justice owing to the present jurisdiction; instances of this, and of the great hardship of the criminal procedure. Roberts, 1661, 1672, 1774, 1776. Statement as to the unfitness of justices of the peace to decide cases of breach of contract; objection, moreover, to such cases going before the magistrates at all, as giving men a criminal character. *Ib.* 1662, 1688, 1691, 1703, 1711. Sympathy of the magistrates with the employers. *Ib.* 1680, 1683, 1685, 1711."

"Objection, in any case, to the justices or magistrates as the tribunal to decide between employer and employed, more especially because of their sympathy with the former. Odger, 1889, 1897, 1921, 1929, 1945, 1950, 1974, 1981, 1996, 2000. Recent instance at Dronsfield, in Cheshire, of a very improper decision by a magistrate, witness having subsequently appealed to the Home Office, but without effect. Roberts, 2252."

V. EVIDENCE IN DEFENCE OF THE JURISDICTION OF THE JUSTICES.—"Statement in defence of the magistrates as the tribunal to adjudicate in cases of breach of contract. Objection to *the Sheriff Court*. Hood (*k*), 1287, 1295, 1332, 1334, 1347, 1350. Approval of the jurisdiction of the justices in cases of breach of contract; absence of partiality on their part in witness' district. Lancaster, 1469, 1485. Approval of the jurisdiction as exercised by the justices in witness' district. Forster, 1568, 1573. Witness has never heard objection made to the jurisdiction of the justices in Scotland. Ormiston, 2101, 2102."

V. Evidence
in defence of
jurisdiction
by justices.

"Statement as to the very efficient administration of the law by the justices in Lanarkshire; leniency rather than harshness in their decisions of cases against workmen. Burns (*l*), 2299, 2301, 2304, 2356. Approval of a reten-

(*k*) Mr. Hood thinks the jurisdiction would be better in the hands of the justices than in those of the sheriff. No one who knows anything about the matter will concur with him in this; but then Mr. Hood is a colliery owner. He could hardly have a worse qualification for giving an impartial opinion, except, perhaps, that of being a J.P.

(*l*) But see Mr. Burns' opinion as to

stipendiary magistrates, *post*, p. 188. Mr. Burns appeared as secretary and law agent to the Association of Mine Owners of Scotland, and as a member of the executive committee of the Mining Association of Great Britain. His condemnation of the system of unpaid magistrates, therefore, is all the more telling against the defence of such jurisdiction.

ANALYSIS OF EVIDENCE. tion of the present tribunal for trying cases of breach of contract in the case of miners, it still remaining open to workmen to bring their masters before the county court instead of the magistrates. 2393, 2395. Efficiency of magistrates as the tribunal to decide cases of breach of contract. *Ib.* 2402, 2403, 2410."

"Statement in favour of retaining the present tribunal without any prohibition upon magistrates hearing a case in which the prosecutor is in the same trade as themselves. Matthews, 2429, 2446. Custom in Staffordshire for magistrates not to sit on cases in which they are directly or indirectly interested. *Ib.* 2432, 2437. Efficiency of the present tribunal for deciding cases of breach of contract; impartiality of the decisions. *Ib.* 2499, 2501. Approval of the jurisdiction of the magistrates as being the readiest tribunal. Mault, 2604."

VI. SUGGESTIONS FOR AN IMPROVEMENT OF THE EXISTING TRIBUNAL, OR FOR ADJUDICATION BY A NEW COURT.—"Proposal that questions of breach of contract be tried before a competent legal tribunal, such as the Sheriff's Court in Scotland, and before the County Court judges in England. Newton, 54, 61, 66, 87, 94. Approval of the decision of the sheriff being final, without an appeal. *Ib.* 113, 209, 214."

VI. Suggestions for improvement.

Improvement if the sheriff or sheriff-substitute in Scotland, and the County Court judge in England, were substituted for the present tribunal; doubt as to much inconvenience from delay. Campbell, 315, 323, 329. Advantage if all cases between master and men were committed to the sheriff or sheriff-substitute of the district; slight delay likely to arise. Macdonald, 544, 549. The law would be much more impartially administered by the sheriff. Steele, 736."

"General objection to the jurisdiction of unpaid magistrates, so that the jurisdiction of the stipendiary magistrate or sheriff would, if practicable, be preferable. Burns, 2300, 2302, 2304. Difficulty in many districts of obtaining a tribunal of three magistrates. *Ib.* 2357, 2358. Advantage if the cases were tried by not less than two magistrates and in open court. 2407, 2408. Advantage of stipendiary magistrates rather than of the justices as the tribunal to decide cases of breach of contract. Mault, 2620, 2624."

Mr. Burns was asked the following question, or rather a question was put by the chairman, Lord Elcho, which suggested its answer (2300):—

"You do *not believe* that there is *any failure* of justice through ignorance of the bearings of the law of contract on the part of those justices?"

The answer, however, is not that which was evidently sought for. Mr. Burns says:—

"I may say I have a general objection to the jurisdiction of unpaid magistrates altogether, arising from their frequent want of knowledge of the law; but *since* such a jurisdiction exists, I have no particular reason for supposing that there is a failure of justice before the justices of Lanarkshire any more than elsewhere."

It is right to state what Mr. Burns adds:—

"I have heard generally the statements made with respect to the justices of

Lanarkshire, and I must say that I would look upon these statements as a gross calumny." ANALYSIS OF EVIDENCE.

Mr. W. P. Roberts, solicitor in Manchester, who appears to have been three times examined, gave the following among other instances of the extraordinary way in which justices of the peace deal with cases between employers and employed:—

"There was a case," he says, "which occurred a short time ago, in which I am perfectly sure such a jurisdiction (County Court) would have given a different decision. It was a case which occurred in Dronsfield, in Cheshire. Some men had been employed to work on an iron chain composed of links, and they had worked till the chain became injured. The chain was taken away and another was substituted; but the other chain which was substituted was a chain which had been used some three or four months before, and had broken in its work, in consequence of which a man had either been killed or seriously injured: the chain had been spliced since, and on the men being required to work upon it they refused. They had no dispute with the employer as to wages or anything else, but they were afraid to work with that chain. They were assured that everything had been done to make the chain safe; but still they were afraid, and they refused to work unless they were provided with another chain. They were summoned before a magistrate, or perhaps they were taken by warrant before a magistrate, at Eccleston, I think. There I urged on their part what I have just stated; but the magistrate held, on the evidence given, that the chain was perfectly safe: and in that case we had this remarkable evidence:—An engineer was examined, who stated that some of the links would bear, we will say, a couple of tons, and others much weaker, that would only bear half a ton. The magistrate asked him what average the chain would carry, and the witness replied, 'a ton.' I asked him courteously whether the strength of a chain was not its weakest part: eventually I did convince him that such was the fact; but not till after twenty minutes' tuition. I brought that case in some degree before the government. Being very anxious about it, I came up to town and sent for Mr. Bazley out of the House, and some other gentlemen. Mr. Bazley said he would take me to Mr. Waddington; I said, 'For heaven's sake do not do anything of the sort; I know what I shall have from Mr. Waddington; he will receive me with the greatest courtesy; he will take down two or three particulars from me; he will send to the magistrate; and in two or three weeks time I shall receive the usual lithographed letter, saying that he begs to inform me, with extreme regret, that there is no ground for interference in this case.' Mr. Bazley said—'I will try and make a different result in this case.' So I went before Mr. Waddington, and told him what I have just stated. He said—'But what is there in this case to take it out of the ordinary category of cases?' I said—'There is this; I pledge myself to this, that the chain which the men refused to work by was defective three months before, and a man was killed, or nearly so, by its defect; I pledge myself to that.' 'Well,' he said, 'that does make a distinction, certainly; I will write to you in two or three days;' and he intimated that the men should be released. However, in the course of a fortnight I got the ordinary letter, and the men were still in prison. That is a case in which a County Court judge could not have

Minutes, p.
104.

Case referred to by
Mr. W. P.
Roberts.

ANALYSIS OF EVIDENCE. given that decision. I do not believe the engineer could have given that evidence to a County Court judge. The magistrate took it as gospel truth that, one link carrying two tons and another only carrying five hundredweight, the chain would carry an average weight of one ton."

Such, then, are the statements of the witnesses for both parties, and we may now close the matter by giving the opinion of Mr. Sheriff Barclay. By referring to page 35 of this work (note *h*) it will be found that Mr. Barclay made the following observation to the Committee:—"I am sorry to say that the justices in Scotland do not like to take the responsibility frequently, and they devolve a good deal of the proper justice of peace business upon the sheriff." So true is this, indeed, that the learned sheriff may not inaptly be styled Chief Justice of the county of Perth. The following important question, with reference to the powers of justices, was put to him by Mr. Cox:—

"220. Do you think that it would be better that the County Court judge should have the power or that the justice should have it?—That is another branch of the subject. I observe that the former Act, under which we are acting, that is to say, the Act Geo. IV., gave the jurisdiction entirely to justices. Under the bill which the committee are now considering—"

Opinion of
Sheriff
Barclay.

"221. The question which we are now upon is the law as regards master and servant, not the bill. You have said, as I understand you, that these clauses, Nos. 21 and 22 of the 11 & 12 Vict., would give the justice the power which you suggested just now should be given to the County Court judge; have you any reason for preferring the County Court judge to the justice?—When I speak of the County Court judge in Scotland I am speaking of a sheriff like myself. He may be analogous to your County Court judge in England, and I am *decidedly* of opinion that the power should be given to *him*."—Minutes of Evidence, p. 17.

Mr. Barclay is also asked the following question by Lord Elcho:—

"262. And the result of your experience as a judge, and your own personal feeling, as I gather, is that the state of the law in the 4 Geo. IV., by which an agricultural labourer when he breaks his contract is put practically on the same footing as a criminal offender and pickpocket, ought to be amended?—Decidedly."

From a consideration of the evidence so taken, the Committee afterwards gave in the following report:—

THE SELECT COMMITTEE appointed "to inquire into the state of the law as regards CONTRACTS of SERVICE between MASTER and SERVANT, and as to the expediency of amending the same," have considered the matters to them referred, and have come to the following RESOLUTIONS, which they have agreed to report to the House:—

1. That the law relating to Master and Servant, as it now exists, is objectionable.

2. That all cases arising under the law of Master and Servant should be publicly tried, in England and Ireland, before two or more magistrates, or a stipendiary magistrate, and in Scotland, before two or more magistrates, or the sheriff. ANALYSIS OF
EVIDENCE.

3. That procedure should be by summons in England and Ireland, and by warrant to cite in Scotland; and failing the appearance of defendant in answer to summons or citation, the court should have power to grant warrant to apprehend.

4. That punishment should be by fine, and failing payment by distress or imprisonment.

5. That the court should have power, when such a course is deemed advisable, to order the defendant to fulfil contract; and also, if necessary, to compel him to find security that he will duly do so.

6. That in aggravated cases of breach of contract, causing injury to person or property, the magistrates or sheriff should have the power of awarding punishment by imprisonment instead of fine.

7. That the arrest of wages in Scotland in payment of fines should be abolished.

8. That a suggestion having been made to the Committee, viz., that in all cases of breach of contract between Master and Servant it should be competent to examine the parties to the action as in civil cases, although the offence be punishable on summary conviction, the Committee are not prepared themselves to recommend the adoption of such a principle, involving, as it does, departure from the law of evidence in such cases as now settled.

30th July, 1866.

CHAPTER VII.

VI.—CIVIL LEGISLATION, AS RECIPROCALLY AFFECTING MASTERS, WORKMEN, SERVANTS, AND APPRENTICES, SINCE 1824.

30 & 31 Vict.
c. 141.

MASTER AND
SERVANT
ACT, 1867.

Definition
of terms.

THE result of the report of the Select Committee of the House of Commons, referred to in last chapter, was the passing of the Act 30 & 31 Vict. c. 141, intituled "An Act to amend the statute law between master and servant." The preamble states that "it is expedient to alter in *some respects* the existing enactments relative to the determination of questions between employers and employed." The Act is to be cited for all purposes as "The Master and Servant Act, 1867." It is provided that the word "employer" shall include any person, firm, corporation, or company, who has entered into a contract of service with any servant, workman, artificer, labourer, apprentice, or other person, and the steward, agent, bailiff, foreman, manager, or factor of such parties; and that the word "employed" shall include any servant, workman, artificer, labourer, apprentice, or other person, whether under the age of twenty-one years or above that age, who has entered into a contract of service with any employer. The words "contract of service" include any contract, whether in writing or by parole, to serve for any period of time or to execute any work, and any indenture or contract of apprenticeship, whether such contract or indenture has been or is made or executed before or after the passing of the Act. The word "magistrate" does not apply to Scotland.

The scope of the enactment is, however, limited by the first schedule appended to it, to the following Acts, viz.:—

Schedule
No. 1.

SCHEDULE NO. 1.

"7 Geo. I. statute 1, c. 13, ss. 4, 6.—An Act for regulating the journeymen tailors within the weekly bills of mortality."

"9 Geo. I. c. 27, s. 4.—An Act for preventing journeymen shoemakers selling, exchanging, or pawning boots, shoes, slippers, cut leather, or other materials for making boots, shoes, or slippers, and for better regulating the said journeymen."

"13 Geo. II. c. 8, ss. 7, 8.—An Act to explain and amend an Act made in the first year of the reign of her late Majesty Queen Anne, intituled an Act for the more effectual preventing the abuses and frauds of persons employed in the working of the woollen, linen, fustian, cotton, and iron manufactures of this kingdom, and for extending the said Act to the manufactures of leather." 80 & 81 Vict.
c. 141.
Schedule
No 1.

"20 Geo. II. c. 19.—An Act for the better adjustment and more easy recovery of the wages of certain servants, and for the better regulation of such servants, and of certain apprentices."

"27 Geo. II. c. 6.—An Act to repeal a proviso in an Act made in the twentieth year of his present Majesty's reign, intituled an Act for the better adjusting and more easy recovery of the wages of certain servants, and for the better regulation of such servants, and of certain apprentices, which provides that the said Act shall not extend to the Stanneries in Devon and Cornwall."

"31 Geo. II. c. 11, s. 3.—An Act to amend an Act made in the third year of the reign of King William and Queen Mary, intituled an Act for the better explanation and supplying the defects of the former laws for the settlement of the poor, so far as the same relates to apprentices gaining a settlement by indenture, and also to empower justices of the peace to determine differences between masters and mistresses and their servants in husbandry, touching their wages, though such servants are hired for less time than a year."

"6 Geo. III. c. 25.—An Act for better regulating apprentices and persons working under contract."

"17 Geo. III. c. 56, ss. 8, 19.—An Act for amending and rendering more effectual the several laws now in being for the more effectual preventing frauds and abuses by persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, and silk manufactures, and also for making provisions to prevent frauds by journeymen dyers."

"33 Geo. III. c. 55, ss. 1, 2.—An Act to authorize justices of the peace to impose fines upon constables, overseers, and other peace or parish officers, for neglect of duty, and on masters of apprentices for ill usage of such their apprentices, and also to make provision for the execution of warrants of distress granted by magistrates."

"39 & 40 Geo. III. c. 77, s. 3.—An Act for the security of collieries and mines, and for the better regulation of colliers and miners."

"59 Geo. III. c. 92, ss. 5, 6.—An Act to enable justices of the peace in Ireland to act as such in certain cases out of the limits of the counties in which they actually are, to make provision for the executions of warrants of distress granted by them, and to authorize them to impose fines upon constables and other officers for neglect of duty, and on masters for ill usage of their apprentices."

"4 Geo. IV. c. 29.—An Act to increase the power of magistrates in cases of apprenticeships."

"4 Geo. IV. c. 34.—An Act to enlarge the powers of justices in determining complaints between masters and servants, and between masters, apprentices, artificers, and others."

"10 Geo. IV. c. 52.—An Act to extend the powers of an Act of the fourth year of his present Majesty, for enlarging the powers of justices in determining

80 & 81 Vict. c. 141. complaints between masters and servants to persons engaged in the manufacture of silk."

MASTER AND SERVANT ACT, 1867. "5 & 6 Vict. c. 7.—An Act to explain the Acts for the better regulation of certain apprentices."

Schedule No. 1. "6 & 7 Vict. c. 40, s. 7.—An Act to amend the laws for the prevention of frauds and abuses by persons employed in the woollen, worsted, linen, cotton, flax, mohair, and silk hosiery manufactures, and for the further securing the property of the manufacturers, and the wages of the workmen engaged therein."

"14 & 15 Vict. c. 92, s. 16.—The Summary Jurisdiction (Ireland) Act, 1851."

The recovery of moneys by distress or pointing of the goods and chattels of the party failing to pay, and the matter of imprisonment, are provided for by—

Schedule No. 2.

THE SECOND SCHEDULE.

Summary Procedure Acts Applied.

ENGLAND.

"11 & 12 Vict. c. 43.—An Act to facilitate the performance of the duties of justices of the peace out of Sessions, within England and Wales, with respect to summary convictions and orders."

"28 & 29 Vict. c. 127.—The Small Penalties Act, 1865."

SCOTLAND.

"27 & 28 Vict. c. 53.—The Summary Procedure Act, 1864."

IRELAND.

"14 & 15 Vict. c. 93.—The Petty Sessions (Ireland) Act, 1851."

Mode of laying an information or complaint by master or servant.

After providing that the provisions of the Act shall apply to no contracts of service except such as fall within the meaning of the enactments described in the schedule No. 1, it is enacted that whenever a party in the position of an employer or employed neglects or refuses to fulfil any contract of service; or the employed shall neglect or refuse to enter upon or commence his service according to the contract, or shall absent himself from his service; or whenever any question of difference or dispute arises as to the rights or liabilities of either of the parties, or touching any misusage, misdemeanor, misconduct, or ill treatment, or injury to person or property—the party feeling aggrieved may lay an information or complaint in writing before any justice, magistrate, or sheriff, setting forth the grounds of complaint, and the amount of compensation, damage, or other remedy claimed for the breach or non-performance of such contract, or for any misusage, misdemeanor, misconduct, ill treatment, or injury to person or property of the party so complaining; and upon such information being laid, a summons or citation shall be issued setting out the grounds of complaint, and the amount claimed

Summons to be issued.

for compensation, damage, or other remedy, and requiring the party complained against to appear at a time and place therein appointed before two justices, or before a magistrate, or before the sheriff, to answer to the complaint, so that it may then be heard and determined.

80 & 81 Vict.
c. 141.

MASTER AND
SERVANT
ACT, 1867.

The time to be appointed in the summons for the appearance of the party is not to be less than two nor more than eight days from the date of the summons, except that when the appearance is to be before a justice in petty sessions, or before a magistrate at a police court, the time to be appointed shall be that of the sitting of the court of petty sessions or police court, at or for the place where the summons or citation is returnable, to be held next after such two days, whether within such eight days or not. Every such summons or citation is to be served upon the party by being delivered to him or left at his usual place of abode or business, not less than two days before the time appointed for his appearance. When he neglects or refuses to appear, after due proof on oath of the service, a warrant may be issued for his apprehension, in order to the hearing and determining of the matter of the information or complaint.

Time for ap-
pearance of
defendant.

If at any time after the lodging of the information or complaint it appears to the justice, or magistrate, or sheriff, that the party complained against is about to abscond, a summons may be issued requiring him to appear at a time and place therein appointed, not later than twenty-four hours, exclusive of Sunday, from the date of the summons, and to find security, by recognizance or bond, to the satisfaction of the judge for his appearance, and to answer the information or complaint.

Proceedings
where defen-
dant about
to abscond.

If the party fail to attend, a warrant may be issued for his apprehension. Should he, however, appear to the last mentioned summons, or on being so apprehended fail to find security to answer to the complaint, he may be detained in safe custody until the hearing of the information or complaint; but on his finding security he is to be set at liberty.

Warrant for
apprehen-
sion may be
issued if
defendant
fails to
attend.

This provision is equivalent in some respects to the proceeding against parties *in meditatione fugæ* in Scotland, and will be found very useful as applicable to cases where that diligence could not be used, in respect of the sums involved being less than £8 6s. 8d.

Upon the hearing of the information, the judge, after due examination, and upon proof and establishment of the matter

Proceedings
after hearing
information
and proof.

30 & 31 Vict.
c. 141.

MASTER AND
SERVANT
ACT, 1867.

Security to
be found to
fulfil con-
tract.

Party com-
plained
against may
be fined to
the extent of
£20.

Imprison-
ment not to
exceed three
months.

Compensa-
tion.

thereof, by an order in writing may either make an abatement of the whole or part of any wages then due to the employed, or may direct the fulfilment of the contract of service, with a direction to the party complained against to find *forthwith* good and sufficient security, in the terms already referred to, for the fulfilment of the same; or else he may annul the contract, discharging the parties and apportioning the amount of wages due up to the completed period thereof; or when an amount of compensation or damages cannot be assessed, or where pecuniary compensation will not, in the opinion of the judge, meet the circumstances of the case, he may impose a fine upon the party complained against, not exceeding in amount the sum of £20, or else assess and determine the amount of compensation or damage, together with the costs, to be made to the party complaining, inclusive of any wages abated, and direct the same to be paid accordingly. When the order directs the contract to be fulfilled and security to be found, and the party neglects or refuses to comply with such order, a warrant may be issued for committing him to prison until such security is found, but so that the term of imprisonment, whether under one or several successive committals, shall not exceed in the whole the period of three months.

It is provided, further, that the judge may assess the amount of compensation or damage, and direct the same to be paid to the complainer whether the contract is annulled or not, or, in addition to the annulling thereof, he may impose a fine, as already mentioned. There is no power, however, given to annul any indenture or contract of apprenticeship which could not have been annulled by such judge before the passing of the Act.

It will be observed, from the above provision, that it is only in the case where the contract is ordered to be fulfilled that a direction is to be given to find security for implement of the decree; but in the case where the defender has been apprehended as having the intention to abscond, and finds security to appear until the hearing of the complaint, there is no provision, although there may be *meditatio fugæ manifesta*, for his finding security for payment of the sum which may be decreed against him, or go to prison for three months. If a servant can be *forthwith* ordained to find security to fulfil the contract or go to jail, upon the same principle a master who has been apprehended in an attempt to abscond should be ordained to find security for pay-

ment of the sum in the decree, or take the consequences. It is quite true that the provision as to finding security for the fulfilment of the contract is applicable both to the master and to the servant; but it is equally true that the masters' complaints almost always contemplate fulfilment of the contract as the remedy sought, while those of the servant generally resolve themselves into claims for wages or damages, so that, as the law now stands, the employer will have all the benefit of the order for security of fulfilment of his servant's obligation, while the latter can never compel his master, even when he is admittedly in the very course of flying from his creditors, to find security for payment of the sum decerned against him. The fairest way would be to compel either of the parties intending to abscond to find security for payment or performance of the decree.

80 & 81 Vict.
c. 141.

MASTER AND
SERVANT
ACT, 1867.

Party inten-
ding to ab-
scond ought
to find se-
curity.

Where it is alleged that the recognizance or bond given for the fulfilment of the contract has not been implemented, the judge, on being satisfied as to this, after hearing the parties and the sureties, if any, or, in absence of these parties not appearing after summons or citation, may order the recognizance or bond to be enforced for the whole or part of the sum thereby secured, to be recovered under the Acts referred to in the second schedule annexed thereto.

Procedure
when recog-
nizance has
not been im-
plemented.

When an order for payment of money is pronounced after the case is determined, and the sum decerned for is not paid as directed, it may be recovered by distress or pouding of the goods of the party decerned against, and in default thereof by imprisonment, according and subject to the Acts mentioned in the second schedule; but it is provided that no such imprisonment shall be for more than three months, or shall be with hard labour. Cynics may perhaps smile at this proviso against hard labour, and be inclined to say that it was not to be expected that it would, in this instance, at least, be included in an Act where masters are for the first time professedly placed upon an equal footing before the law with their servants.

Imprison-
ment in de-
sult of pay-
ment.

No hard
labour.

One objectionable feature in the present Act, applicable indeed to a good many other enactments, is that it is not complete in itself. Nothing was easier than to have stated the nature of the decree to be pronounced under the provisions referred to, and to have given a form or forms of it in the appendix; but instead of that being done we are sent away to the Summary Procedure

No form of
decree
given.

30 & 31 Vict. c. 141. Acts, referred to in the second schedule, to hunt up among various warrants, convictions, or judgments for some one which

MASTER AND
SERVANT
ACT, 1867.

may, *mutatis mutandis*, suit the provisions of the Master and Servant Act, 1867.

There is no authority in the Summary Procedure Act for Scotland (27 & 28 Vict. c. 53), nor in any of its forms, to use the diligence of arrestment, except under the form of "Judgment for a Penalty recoverable by Diligence," being No. 6 of the appendix to that Act. But as a penalty is only one of the modes by which, in the Master and Servant Act, 1867, the judge may in his order decern payment to be made, it will follow that if the order is made for payment of wages or damages there is nothing to authorize the use of the diligence of arrestment upon such a decree.

Imprison-
ment to
operate as
a discharge
of all orders
pronounced
by the judge.

It is provided that imprisonment will operate as a complete discharge of any order pronounced by the judge, and of all expenses contained in it, and that the Act gives no authority for attaching any wages due to a servant accruing after the date of an order decerning against him for payment of any fine, compensation, damages, or costs. Part of any fine imposed and received, not exceeding one-half, may go to the party wronged or injured. In cases where any injury is inflicted on person or property, or the complaint is one with regard to misconduct, misdemeanor, or ill treatment, and the acts are of an aggravated character, if the matters complained of have not arisen or been committed in the *bona fide* exercise of a legal right existing or reasonably supposed to exist, and where any pecuniary compensation or other remedy provided by the Act would not meet the circumstances of the case, the party guilty of such aggravated offences may be committed to prison for any term not exceeding three months, with or without hard labour. There is an appeal given against such conviction to the General Court of Quarter Sessions, upon security being found to abide the result of the appeal.

In aggravated
offences
party may be
committed to
prison.

Parties and
their hus-
bands and
wives may
now be
witnesses.

It is also provided that both parties to the contract may now be witnesses, and their husband and wives, so that the hardship of a workman or apprentice being incapable of giving evidence in his own behalf, on the ground of the proceedings being of a criminal nature, no longer exists as one of similar degrading marks of the inferiority of his position in our statute book.

The Act is not to prevent either of the parties from enforcing their civil rights in the ordinary courts of law; nor does it affect the provisions of the Act 5 Geo. IV. c. 96, known as the Arbitration Act, which was fully considered in a previous chapter; and it does not interfere with the usual mode of procedure for indictable offences relating to wilful and malicious injuries to persons and property.

30 & 31 Vict.
c. 141.

MASTER AND
SERVANT
ACT, 1867.

Act not to
prevent parties
from applying
to the ordinary
courts of
law.

There are the usual clauses providing that no objections as to defects in form shall be valid, and that there shall be no appeal to the supreme courts. It is also provided that nothing in the Act shall take away or abridge any local or special jurisdiction touching apprentices. The Act is to continue in force until the expiration of one year after the passing thereof, and to the end of the then next session of Parliament, and no longer. It will consequently expire on 20th August, 1868, unless renewed.

Act only to
continue in
force for one
year.

As the third section of the Master and Servant Act, 1867, expressly enacts that "nothing in this Act shall apply to any contract of service other than a contract within the meaning of the enactments described in the first schedule to this Act," it is important to know what these enactments are, and it will therefore be expedient to go over the Acts in the order of the schedule itself.

ENACTMENTS
REFERRED TO
IN MASTER
AND SER-
VANT ACT,
1867.

7 Geo. I. stat. 1, c. 13, ss. 4, 6.

The second section of this Act, "declaring, limiting, and appointing the hours of work and wages for journeymen taylor, servants, and apprentices to taylor," within the cities of London and Westminster, and within the weekly bills of mortality, provides that "the hours of work for all journeymen taylor, servants, and apprentices to taylor, and other persons employed, or to be employed, or retained as taylor in making up men's or women's work, or such servants or apprentices, within the cities of London and Westminster, or either of them, or within the weekly bills of mortality, shall be from six of the clock in the morning until eight of the clock at night, excepting only that there shall be allowed by the master one penny half-penny a day for breakfast, and one hour for dinner in the time aforesaid; and for the said time or hours of work aforesaid there shall be paid unto every journeyman taylor, or other person employed, or to be employed, or retained as a journeyman taylor, for his work during the hours aforesaid, the wages and sums following (that is to say), from

ENACTMENTS
REFERRED TO
IN MASTER
AND SER-
VANT ACT,
1867.

the five-and-twentieth day of June any sum not exceeding two shillings per diem, and for the rest of the year one shilling and eightpence per diem."

It is enacted by section 3, "That in case any taylor or taylors, or other person or persons acting as such, or carrying on, using, or exercising the art or mystery of a taylor, within the limits aforesaid, shall hire, retain, or employ any journeyman or other person not being an apprentice, he, she, or they so hiring, retaining, or employing any such journeyman or other person aforesaid (apprentices excepted), shall, and they are hereby obliged and required to, pay them after the rate aforesaid, for the full time for which he, she, or they so hire, retain, or employ them, or agree so to do."

Section 4, referred to in the schedule, is in the following terms:—"And for more easily recovering the said wages, it shall be lawful for any two justices of the peace within the limits aforesaid, and they are hereby authorized and required, upon complaint made for that purpose, to summon before them the party or parties offending, and for none payment of such wages, or sufficient satisfaction given for the same to the party or parties aggrieved, to issue their warrant or warrants for levying such wages, due as aforesaid, by distress and sale of the offender's goods, rendering the overplus to the owner; and for want of sufficient distress to commit the party or parties offending to the common gaol, there to remain without bail or mainprize until he, she, or they shall pay or give satisfaction to the party for the same" (a).

Section 6 provides—"That if any person actually retained or employed as a journeyman taylor or servant in the art or mystery of a taylor as aforesaid, within the limits aforesaid, shall at any time or times after the first day of May, 1721, depart from his service before the end of the term or time for which he is or shall be hired or retained, or until the work for which he was hired or retained shall be finished; or not being retained or employed shall refuse to enter into work or employment (after request being made for that purpose by any master taylor, for the wages and hours limited, or to be limited, and appointed as aforesaid), unless it be for some reasonable or sufficient cause, to be allowed by two

(a) By the fifth section, the Quarter Sessions can alter the wages and hours of work.

justices of the peace within the limits aforesaid—then in every such case every person so offending, being thereof lawfully convicted as aforesaid, shall be sent to the house of correction, there to be kept to hard labour for any time not exceeding two months.”

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It may be mentioned that by the eighth section it is enacted that the Act “shall not extend to hinder the paying or receiving any more or other wages or allowances which shall be agreed upon for working before or after the hours of work limited or appointed, or to be limited or appointed, as aforesaid:”

It must be kept in view, with reference to sections 4 and 6 of the Act which we are now considering, that it only applied to the metropolis, and that it was repealed by the statute of 5 Geo. IV. c. 95, except in so far as it related to the recovery of wages, or to journeymen tailors or servants departing from their service, or refusing to enter into work or employment as therein set forth; but as sections 4 and 6 appear to have reference to the wages and employment fixed by section 2, the repeal of that section would seem to leave nothing operative in the Act.

9 Geo. I. c. 27, s. 4.

“And for the better regulating the said journeymen shoemakers, be it further enacted by the authority aforesaid, that all and every person and persons, who shall at any time hereafter be retained or employed in the making up of any boots, shoes, and slippers, or other wares for any one master, and shall neglect the performance thereof, by suffering himself to be retained or employed by any other master, or other person whatsoever, before he or they shall have completed the same, and finished the said work first delivered to him or them—then in every such case every person so offending, being thereof lawfully convicted by the oath or oaths of one or more credible witness or witnesses, before one or more justice or justices of the peace where the offence shall be committed, the person or persons so convicted shall be sent to the house of correction, there to be kept to hard labour for any time not exceeding one month.”

The Act appears to apply only to “any journeyman shoemaker or other person hired or employed as such within the bills of mortality,” as set forth in the first section.

13 Geo. II. c. 8, ss. 7, 8.

Section 7 enacts “that all wages, demands, frauds, abuses,

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neglects, and defaults of labourers, manufacturers, and workmen, in the trades last above mentioned (*i.e.*, "the making or manufacturing of gloves, breeches, boots, shoes, slippers, wares, or goods of that sort"), for or concerning any work done in that manufacture, shall and may be heard and determined by any two justices of the peace of the county, riding, division, city, town, or place where the matter in controversy shall happen or arise, who are hereby empowered to summon and examine witnesses on oath or affirmation concerning the same, which oath or affirmation the said justices are to administer and take."

Section 8 enacts "that all and every person and persons who shall at any time after the 1st day of May, 1740, be first retained or employed in the making up of any gloves, breeches, boots, shoes, slippers, or other wares, as aforesaid, for any one master, and shall neglect the performance thereof, either by procuring or permitting himself to be subsequently retained or employed by any other master or person whatsoever; before he or they shall have completed the work or service in or to do which he or they was or were first and originally so retained or employed, and shall be first delivered to him or them—then, and in every such case, every person so offending, being thereof lawfully convicted by the oath or oaths, affirmation or affirmations, of one or more credible witness or witnesses, before one or more justice or justices of the peace where the offence or offences shall be committed, the person or persons so convicted shall be sent to the house of correction, there to be kept to hard labour for any time not exceeding one month."

20 Geo. II. c. 19; 27 Geo. II. c. 6; 31 Geo. II. c. 11, s. 3.

All complaints, differences, and disputes which shall happen or arise between masters and mistresses and servants in husbandry, who shall be hired for one year or longer (*b*), or for a less time than one year (*c*), or which shall happen or arise between masters and mistresses and artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, and other labourers employed for any certain time, or in any other manner (*d*).

The above provisions apply to complaints for wages "to such servant, artificer, handicraftsman, miner, collier, keelman, pitman,

(*b*) 20 Geo. II. c. 19, s. 1.
(*c*) 31 Geo. II. c. 11, s. 3.

(*d*) 20 Geo. II. c. 19, s. 1.

glassman, potter, or other labourer," "provided that the sum in question do not exceed £10 with regard to any servant, nor £5 with regard to any artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or labourer" (e); and "complaints by any master, mistress, or employer against any such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, or labourer, touching or concerning any misdemeanor, miscarriage, or ill behaviour in such his or her service or employment" (f).

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"Any complaint or application by any apprentice put out by the parish, or any other apprentice upon whose binding out no larger a sum than £5 of lawful British money was paid, touching or concerning any misuse, refusal of necessary provision, cruelty, or other ill treatment of or toward such apprentice by his or her master or mistress" (g).

Application or complaint "by any master or mistress against any such apprentice, touching or concerning any misdemeanor, miscarriage, or ill behaviour in such his or her service" (h).

6 Geo. III. c. 25.

Any apprentice who "shall absent himself from his master's service before the term of his apprenticeship shall be expired," and "shall refuse to serve his master for so long a time as he shall have so absented himself from his service," or to "make satisfaction to his master for the loss he shall have sustained by his absence from his service" (i).

Nothing in the above Act contained extends "to any apprentice whose master shall have received with such apprentice the sum of ten pounds" (j).

"Provided, also, that no apprentice shall be compelled to serve for any time or times, or to make any satisfaction to any master, after the expiration of seven years next after the end of the term for which such apprentice shall have contracted to serve, anything herein contained to the contrary notwithstanding" (k).

"If any artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person shall contract with any person whomsoever for any time or times

(e) 20 Geo. II. c. 19, s. 1.

(f) Ib. s. 2.

(g) Ib. s. 3.

(h) Ib. s. 4.

(i) 6 Geo. III. c. 25, s. 1.

(j) Ib. s. 2.

(k) Ib. s. 3.

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whatsoever, and shall absent himself from his service before the term of his contract shall be completed, or be guilty of any other misdemeanor (*l*).

17 Geo. III. c. 56, ss. 8, 19, commonly called the Embezzlement Act.

"If any person being hired, retained, or employed to prepare or work up any materials, whether mixed or unmixed, for any master or masters, shall wilfully neglect or refuse the performance thereof for eight days successively; or having taken in any materials, whether mixed or unmixed, for manufacture from one master, or two or more masters, being co-partners, shall afterwards take in any materials, whether mixed or unmixed, for manufacture from any other master or masters, or shall procure or permit himself or herself to be employed or retained in any other occupation or employment whatsoever, sooner than eight days before the completion of the work first taken (*m*).

The 6 & 7 Vict. c. 40, which recites the Acts 8 & 9 Will. III. c. 36, and several older statutes, and among others 22 Geo. II. c. 27, and 17 Geo. III. c. 56, enacts that so much of the preceding Acts "as relates to the woollen, linen, cotton, flax, mohair, and silk manufactures, or any of them, or any manufactures whatsoever made of wool, cotton, flax, mohair, or silk materials, whether the same be or be not mixed with each other or with any other materials," so far as respects "the manufactures, trades, occupations, and employments following, that is to say, the manufacture of woollen, worsted, linen, cotton, flax, mohair, or silk materials in, on, or by the stocking frame, warp machine, or any other machine employed in the manufacture of framework, knitted or looped fabrics, and every trade, occupation, operation, or employment whatsoever connected with or incidental to the manufacture of stockings, gloves, and other articles of hosiery," was repealed (*n*).

A new series of enactments is given in place of those repealed; but it is provided by the thirty-third section "That nothing in this Act contained shall extend to *Scotland* or *Ireland*."

(*l*) This section is now merged in 4 Geo. IV. c. 34, s. 3.

(*m*) 17 Geo. III. c. 56, s. 8. The nineteenth section merely relates to the issuing of warrants of apprehension. This Act was held to apply to Scotland.

Case of Battersby, 1st March, 1828; 6 Shaw & Dunlop, 667. Fraser on the Laws of Personal and Domestic Relations, vol. ii. p. 511.

(*n*) 6 & 7 Vict. c. 40, ss. 1, 34.

The 17 Geo. III. c. 56, is therefore still in full force in Scotland, except to the extent to which it is modified as regards sections 8 and 19 by the "Master and Servant Act, 1867" (o).

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33 Geo. III. c. 55, ss. 1, 2.

Complaints "by or on the behalf of any apprentice to any trade or business whatsoever, whether bound apprentice by any parish or township or otherwise, provided that not more than the sum of £10 (p) be paid upon the binding of such apprentice, against his or her master or mistress of any ill usage of such apprentice by any master or mistress" (q).

39 & 40 Geo. III. c. 77, s. 3.

The section recites that "it often happens that colliers and miners, disregarding their agreements, wilfully and obstinately work coal and ironstone in a different manner to what they stipulated, or otherwise abandon the agreement they have entered into, to the great and lasting prejudice of their employers; and it provides that if any person or persons making any bargain, or entering into any contract or agreement in writing, for raising or getting any coal, culm, ironstone, or iron ore, shall wilfully, and to the prejudice of the owner, raise, get, or work, or cause to be raised, got, or worked, any such coal, culm, ironstone, or iron ore in a different manner to his or their stipulations in respect thereto, and contrary to the directions and against the will of the owner, or his agent or agents having the care thereof, or shall desist or refuse to fulfil the engagements they have entered into."

59 Geo. III. c. 92, ss. 5, 6.

Section 5, reciting that "it is expedient to give such and the like powers to justices of the peace in Ireland, to impose fines upon constables and other peace and parish officers within their respective jurisdictions, for neglect of duty in their respective offices, or for disobedience of the warrants or orders of such justices, and also to impose fines upon masters of apprentices for ill usage of their apprentices, and also to make such provision for the execution of warrants of distress granted by

(o) Whipping of females under the 17 Geo. III. c. 56 is abolished by 1 Geo. IV. c. 57.

(p) Extended to £25 by 4 Geo. IV. c. 29.

(q) 33 Geo. III. c. 55, s. 1. Section 2 merely relates to the protection of persons acting under warrants of distress.

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justices, as are by law given and made in Great Britain," gives power to two or more justices of the peace in Ireland, at any special or petty sessions of the peace, upon complaint made to them upon oaths "by or on the behalf of any apprentice to any trade or business whatsoever, whether bound apprentice by any parish or township, or otherwise (provided that not more than the sum of £10 be paid upon the binding of such apprentice), against his or her master or mistress of any ill usage of such apprentice by such master or mistress," to impose, upon conviction, any reasonable fine not exceeding 40*s.* upon such master or mistress (*r*).

4 Geo. IV. c. 29.

After reciting the Acts 20 Geo. II. c. 19, s. 3, and the 33 Geo. III. c. 55, it is enacted that "the provisions of the said recited Acts, so far as the same relates to apprentices, shall extend, and be deemed and construed to extend, to all apprentices upon whose binding out no larger sum than £25 of lawful British money was or shall be paid" (*s*).

4 Geo. IV. c. 34.

After referring to the Acts 20 Geo. II. c. 19, 6 Geo. III. c. 25, and 4 Geo. IV. c. 29, and stating that it was expedient to extend the powers of the said Acts, it is enacted "that it shall and may be lawful, not only for any master or mistress, but also for his or her steward, manager, or agent, to make complaint upon oath against any apprentice, within the meaning of the said before recited Acts, to any justice of the peace of the county or place where such apprentice shall be employed, of or for any misdemeanor, misconduct, or ill behaviour of any such apprentice; or if such apprentice shall have absconded it shall be lawful for any justice of the peace of the county or place where such apprentice shall be found, or where such apprentice shall have been employed, upon complaint by such master, mistress, steward, manager, or agent, to issue his warrant, &c." (*t*).

"All complaints, differences, and disputes which shall arise between masters or mistresses and their apprentices, within the meaning of the said before recited Acts, or any of them, touching

(*r*) Section 6 merely refers to the protection of persons acting under warrants of distress.

(*s*) There is no other part of this Act which requires notice.

(*t*) 4 Geo. IV. c. 34, s. 1.

or concerning any wages which may be due to such apprentices, . . . provided that the sum in question do not exceed the sum of £10" (u).

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"If any servant in husbandry, or any artificer, calico printer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person, shall contract with any person or persons whomsoever, to serve him, her, or them for any time or times whatsoever, or in any other manner, and shall not enter into or commence his or her service according to his or her contract (such contract being in writing, and signed by the contracting parties), or having entered into such service shall absent himself or herself from his or her service before the term of his or her contract, whether such contract shall be in writing or not in writing, shall be completed, or neglect to fulfil the same, or be guilty of any other misconduct or misdemeanor in the execution thereof, or otherwise respecting the same" (v).

"And whereas it frequently happens that such masters, mistresses, or employers reside at considerable distances from the parishes or places where their business is carried on, or are occasionally absent for long periods of time, either beyond the seas or at considerable distances from such parishes or places, and during such residence or occasional absences intrust their business to the management and superintendence of stewards, agents, bailiffs, foremen, or managers, whereby such servants, artificers, handicraftsmen, miners, colliers, keelmen, pitmen, glassmen, potters, labourers, or other persons and apprentices, are or may be subjected to great difficulties and hardships, and put to great expense in recovering their wages: Be it therefore enacted, that in either of the said cases it shall and may be lawful to and for any justice or justices of the county or place where such servant in husbandry [&c.] shall be employed, upon the complaint of any such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person or apprentice, touching or concerning the non-payment of his or her wages, to summon such steward, agent, bailiff, foreman, or manager to be and appear before him or them at a reasonable time to be named in such summons, and to hear and determine the matter of the complaint in such and the like manner as complaints of the like nature against any master, mistress, or employer are

(u) 4 Geo. IV. c. 34, s. 2.

(v) 4 Geo. IV. c. 34, s. 3.

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directed to be heard and determined in and by this and the before recited Acts (*w*); and also to make an order for the payment by such steward, agent, bailiff, foreman, or manager to such servant, artificer, handicraftsman, miner, collier, keelman, pitman, glassman, potter, labourer, or other person or apprentice, of so much wages as to such justice or justices shall appear to be justly due, provided that the sum in question do not exceed the sum of £10" (*x*). "Provided, always, that nothing in this Act contained shall extend to impeach or lessen the jurisdiction of the chamberlain of the city of London, or of any other court within the said city, touching apprentices."

The succeeding Act, viz., 10 Geo. IV. c. 52, extends the provisions of the 4 Geo. IV. c. 34, which we have just been considering, to the persons engaged, whether as masters, servants, apprentices, or otherwise, in the several manufactures, trades, and occupations mentioned in 17 Geo. III. c. 56, commonly called the Embezzlement Act.

10 Geo. IV. c. 52.

"Whereas an Act was passed in the fourth year of the reign of his present Majesty, intituled 'An Act to enlarge the power of justices in determining complaints between masters and servants, and between masters, apprentices, artificers, and others' (*y*), and whereas it is expedient to extend the operation of the said Act: Be it enacted that all the provisions of the said Act shall be extended to all persons engaged, whether as masters, servants, apprentices, or otherwise, in the several manufactures, trades, and occupations mentioned in an Act passed in the seventeenth year of the reign of his late Majesty King George III. (*z*), intituled 'An Act for amending and rendering more effectual the several laws now in being for the more effectual preventing of frauds and abuses by persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, and silk manufactures, and also for making provisions to prevent frauds by journeyman dyers,' in the same manner as if such persons had been specially mentioned therein" (*a*).

It has been already mentioned, in treating of the 17 Geo. III.

(*w*) 20 Geo. II. c. 19; 6 Geo. III. c. 25; 4 Geo. IV. c. 29, *supra*.

(*x*) 4 Geo. IV. c. 34, s. 4.

(*y*) 4 Geo. IV. c. 34.

(*z*) 17 Geo. III. c. 56, Embezzlement Act.

(*a*) 10 Geo. IV. c. 52.

c. 56 (b), that it was repealed by the 6 & 7 Vict. c. 40 (c), in so far as the *woollen, linen, cotton, flax, mohair, and silk* manufactures are concerned, leaving under its provisions merely the *iron, leather, fur, and hemp* trades, and persons employed in the manufacture of hats, journeymen dyers, and journeymen hot-pressers.

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The title of the 10 Geo. IV. c. 52, which professes to extend the provisions of 4 Geo. IV. c. 34 to *all* these persons, is "An Act to extend the powers of an Act of the fourth year of his present Majesty, for enlarging the powers of justices in determining complaints between masters and servants, *to persons engaged in the manufacture of silk.*" But, of course, in its provisions it goes much farther, and includes *all* the parties mentioned in the 17 Geo. III. c. 56. It has been doubted whether the subsequent partial repeal of that statute, by 6 & 7 Vict. c. 40, affects the legislation of the 10 Geo. IV. c. 52, on the subject; but the thirty-third section of the former Act would seem to provide against any dubiety on this ground. It enacts that "nothing in this Act contained shall extend to Scotland or Ireland, or be construed to extend to repeal *any* Act or statute, or part thereof, *now in force, and not repealed by the Act.*" The inference, therefore, is, that *all* the parties mentioned in the 17 Geo. III. c. 56, were under the operation of the 4 Geo. IV. c. 34.

5 & 6 Vict. c. 7.

After referring to the Acts 20 Geo. II. c. 19, 33 Geo. III. c. 55, and 4 Geo. IV. c. 29, all previously noticed, this Act proceeds to state that "doubts have been entertained whether the said Acts apply to the case of any apprentice where no sum of money was paid on the binding of such apprentice," and enacts "that all the powers and provisions of the said Acts, and each of them, shall be taken to extend to apprentices where no sum or premium of apprenticeship has been or shall be paid on the binding of such apprentice" (d).

6 & 7 Vict. c. 40, s. 7.

"If any person intrusted, employed, or contracting to prepare, work up, or manufacture, or to have prepared, worked up, or manufactured, either by himself or by any person or persons to be employed by or under him, or by himself jointly with any person or persons to be employed by or under him, any woollen,

(b) *Ante*, p. 204. (c) 6 & 7 Vict. c. 40, ss. 1, 34. (d) 5 & 6 Vict. c. 7, s. 1.

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worsted, linen, cotton, flax, mohair, or silk materials, shall not prepare, work up, or manufacture, or cause to be prepared, worked up, or manufactured, the said materials, and return the same within seven clear days after the time which shall have been agreed upon between such person and the owner of the said materials or other the person intrusting him therewith, and in case no such time shall have been so agreed upon, then within seven clear days after being required so to do (unless prevented by some reasonable and sufficient cause, to be allowed by the justices before whom he shall be brought); or shall leave or return such materials without having performed, as he could and ought to have done, the work he was employed to perform thereon or thereto, and without the consent of the person intrusting him with such materials as aforesaid, or shall damage the same; or if any person shall contract or engage to work, or be employed to do or perform, or to have done or performed, any work in any of the said manufactures, or connected therewith, or incidental thereto, or any parts, branches, or processes thereof, either by himself or by any person or persons to be employed by or under him, and whether such contract or engagement shall be to work or be employed for any person exclusively, or for all or part of his time, or for specific work or otherwise, and whether such person is to be paid according to the value or amount of the work done, the time employed, or in any other manner whatsoever, and shall neglect to fulfil such contract or engagement, or absent himself from such work or employment before such notice (if any) as shall have been agreed upon between the said parties for determining the said contract or engagement shall have expired, or without giving such notice or contrary to the terms of such contract or engagement (unless prevented as aforesaid), to be allowed as aforesaid" (e).

14 & 15 Vict. c. 92, s. 16 (Ireland).

"The decision of certain disputes between employers and the

(e) It is enacted by section 34, that the Act "shall not extend, or be construed to extend, to any manufacture, trade, occupation, or employment, except only the manufactures, trades, occupations, and employments following: that is to say, the manufacture of woollen, worsted, linen, cotton, flax, mohair, or silk materials, in, on, or by

the stocking frame, warp machine, or any other machine employed in the manufacture of framework, knitted or looped fabrics; and every trade, occupation, operation, or employment whatsoever, connected with, or incidental to, the manufacture of stockings, gloves, and other articles of hosiery. (See also s. 35.)

persons employed by them, shall be subject to the following provisions :—

“1. It shall be lawful for the justices to hear and determine any disputes concerning any sums which shall be due for wages by any master to his apprentice, or by any employer to any artificer, labourer, servant, or other person employed by him to do any species of work or labour whatsoever (whether he shall find materials for the performance of the same or not, and whether such wages shall be due in respect to any day's work, or to any labour done or performed by task, job, or contract); or which shall be due by any person for the hire of any horse, ass, mule, bullock, or other animal for draught, or of any cart, dray, car, plough, harrow, or vehicle drawn by any such animal for the purpose of any labouring work (and not being for the carriage of any passenger or passengers), or for the hire of any boat for the purpose of any labouring work (and not being for the carriage of any passenger or passengers), and whether such hire shall be by the day, or by contract or otherwise; or which shall be due to any schoolmaster or teacher for the teaching of any child, in any school or other place, and whether the engagement shall be for a payment by the day, or for any other period or in any other manner (provided that the amount of the demand for such wages, hire, or tuition, in any of such cases, whether originally greater or not, shall not exceed £10)—and to make such order as they shall see fit for payment of such sums as shall appear to be justly due to the complainant by his master or employer, or in case of any sum claimed for the teaching of any child, by the parent or other person who shall have engaged the complainant to teach such child.

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“2. Whenever it shall appear to the satisfaction of the justices that any schoolmaster, teacher, servant, artificer, labourer, or other person so employed as aforesaid, has been or is likely to be detained from his home or usual place of residence, or has suffered or is likely to suffer any additional loss by reason of the non-payment of any sum which such justices shall so adjudge to be due to him, it shall be lawful for such justices to order that there shall be paid to him by such master or employer, not only the sum so due to him, but also such further sum as compensation, not exceeding the sum of 40s., for the time during which he shall have been so detained from his usual place of

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residence, or for the loss suffered or likely to be suffered, as such justices shall think to be reasonable, having regard to the length of such detention, the diligence or remissness of either party, the usual earnings of such schoolmaster, teacher, servant, artificer, labourer, or other person, and the sum which within the time of such detention he did earn, or under all the circumstances of the case might have earned.

"3. In every case where any such master or employer shall intrust his business to the management and superintendence of any steward, agent, bailiff, foreman, or manager, it shall be lawful for the justices to summon such steward, agent, bailiff, foreman, or manager to appear at petty sessions, and to hear and determine the matter of the complaint in such and the like manner as complaints of the like nature against any master or employer, and to make an order for the payment by such steward, agent, bailiff, foreman, or manager, to the complainant, of such sum or compensation as shall be justly due to him; and in case of refusal or non-payment of any such sum or compensation at such time as shall be directed by such justices, it shall be lawful for them to issue a warrant to levy the same by distress and sale of the goods of such master or employer.

"4. Whenever any servant, artificer, labourer, or other person shall engage by an agreement in writing, signed by both parties, with any person to serve him at any time and in any manner, and he shall not enter into or commence his service according to such agreement, or whenever, having entered into any service under any agreement, whether in writing or not, he shall absent himself before the term specified in such agreement shall be completed, or shall neglect to fulfil the same, or shall be guilty of any misconduct or misdemeanor in the execution of the same, or in any way respecting the same, it shall be lawful for the justices to hear and determine such complaint as may be made against him by his employer, or by the steward, manager, or agent of his employer; and if it shall appear that he has not fulfilled his agreement, or has been guilty of any misconduct in respect to the same, to impose upon him a fine not exceeding the sum of £5, and in default of payment of such fine to commit him to gaol for any term not exceeding three months, and to abate the whole or a part of his wages, and to discharge

him from his agreement or service by a writing under their hands if they shall see fit.

"5. Any servant or other person who shall hire or engage with any master or other person under any false or forged discharge or certificate of character, shall be liable to forfeit all the wages which shall be due to him by such master or person at the time of his conviction, and shall also be liable to a fine not exceeding five pounds, and in default of payment to be imprisoned for a term not exceeding three months" (f).

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Sums due to schoolmasters or teachers under this Act, although contained in the 16th section, do not appear to fall under the provisions of the Master and Servant Act; and the other claims for hire of animals or carts for labouring work could only do so if such hire, &c., formed part of a personal contract by any servant, workman, artificer, or labourer.

It will be now clearly seen that the Master and Servant Act, 1867, only comes in place of the Acts wholly or partially embraced in the schedule No. 1, and that it has no application whatever in regard to any matters or things not embraced in such Acts, or in the sections already referred to. The terms of the 25th section will require to be kept in view in considering the changes which have now been effected. That section provides that "nothing in this Act shall extend or make applicable to Ireland, or to or in any part of Great Britain, any of the enactments described in the first schedule to this Act not in force there independently of this Act."

None of the Acts mentioned in the schedule are in force in Ireland, except 59 Geo. III. c. 92, and the 14 & 15 Vict. c. 92. These two apply exclusively to that country. The 4 Geo. IV. c. 34, was formerly in force in Ireland, but it was repealed so far as that country was concerned by the 13 & 14 Vict. c. 102, s. 60.

The 13 Geo. II. c. 8, extends expressly to Scotland as well as England. The 20 Geo. II. c. 19; 6 Geo. III. c. 25; 17 Geo. III. c. 56; 33 Geo. III. c. 55; 39 & 40 Geo. III. c. 77; 4 Geo. IV. c. 34; and 10 Geo. IV. c. 52—extend to Scotland by implication. The other Acts, however, are solely applicable to England.

It will also require to be kept in view that by the 18th section the Act is not to affect the provisions of 4 Geo. IV. c. 96 (Arbitration Act of 1824). If, therefore, any disputes have been

(f) 14 & 15 Vict. c. 92, s. 16.

ENACTMENTS
REFERRED TO
IN MASTER
AND SER-
VANT ACT,
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referred under this latter Act, or Acts extending or amending it, such reference will be a bar to proceedings under the Master and Servant Act, 1867. The Acts which extend or amend the 4 Geo. IV. c. 96, are the following :—

1 Vict. c. 67.

8 & 9 Vict. c. 77 (to make further regulations respecting the tickets of work to be delivered to persons employed in the manufacture of hosiery in certain cases).

8 & 9 Vict. c. 128 (to make further regulations respecting the tickets of work to be delivered to silk weavers in certain cases).

30 & 31 Vict. c. 105 (to establish equitable councils of conciliation to adjust differences between masters and workmen).

These Acts apply to England, Scotland, and Ireland.

The following notes of decisions in England, Scotland, and Ireland will illustrate various points both in statutory and common law :—

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To constitute the relation of master and servant, the time of the servant must be at the exclusive disposal of the master; but if there be a *contract to serve*, the mere fact of the remuneration being regulated by the labour performed would not prevent the legal relationship of master and servant. Justices have no jurisdiction in the case of domestic servants—*Kitchen v. Shaw*, 6 Ad. and E. 729; and the party must be engaged either as a servant in husbandry, or in some trade or business *ejusdem generis* with those enumerated in the Acts. But it is not necessary that the employment should be such as to require great manual labour. An engagement to take charge of glebe with dairy and poultry, on a fixed weekly wage, with a share of profits, forms a contract of service as a labourer, and not either a partnership or menial service. *R. v. Wortley*, 21 L. J. 44, M. C. It is the description of employment, and not the occupation of the master, which designates the description of servant, and therefore determines the jurisdiction of the magistrates. If the misbehaviour complained of amounts to felony, the justices cannot convict, it not having been intended to give summary jurisdiction over cases of felony by virtue of the Act 4 Geo. IV. c. 34. [*Ex parte Jacklin*, 13 L. J. (N. S.) M. C. 139.] It has been sometimes doubted whether a minor is competent to enter into a contract of service; but the prevailing opinion is strongly in favour of his power to do so, and consequently of the jurisdiction of the magistrates in case of his misbehaviour. But where the minor bound himself to work for a certain period, but the master did not bind himself to find work, the contract was held void. *R. v. Lord*, 12 Q. B. 157.

The contract of service may be made verbally and proved by witnesses, if it does not extend beyond a year, but beyond that term writing is necessary to satisfy the Act. 29 Car. II. c. 3, s. 4; *Bracegirdle*, 1 B. and Ald. 722. Where a servant is hired without reference to time, a year is presumed, with the exception of domestic and menial servants. This has been found to apply to clerks,

warehousemen, newspaper reporters, and editors. *Holcroft*, 1 C. and K. 4. A ENGLAND. governess has been held not to be within the rule of a month's notice. *Todd v. Killage*, 22 Law J. (N. S.) Exch. 1. Where the service is continued after the year, a second year's contract is implied. The presumption of hiring for a year is not an *absolute rule* of law, but is a question for a jury in each particular case on its own facts. The custom of the trade will form an element of consideration. Domestic or menial servants, though hired by the year, are subject to be dismissed, and are entitled to depart on a *month's notice*, or a month's pay, where the master takes the privilege. *Fawcett*, 5 B. and Ad. 904. But the general hiring of an agricultural labourer for the year is not determinable by reasonable notice. *Lilley v. Elwin*, 11 Q. B. 455. A servant engaged for five years is not precluded from claiming for subsequent years by suing for one year's wages. *Clossman*, Q. B. 455. That the servant had previously served for a shorter period than a year, is not of itself evidence that a succeeding engagement is for a less period than a year. *R. v. Wharton*, 5 T. R. 447. Hiring at so much a month is hiring for a year. *Fawcett*, *supra*. But hiring on weekly wages is held to constitute an engagement by the week, unless other circumstances show that a more extended period was intended. *R. v. Bucklechurch*, 5 East, 302; *Wood*, C. B. 166. But wages at so much a week for summer, and at a different rate for winter, is a hiring for a year. *Inhabitants of Warminster*, 6 B. and C. 77. A written contract for life is not illegal, but is not favoured in law. *Chitty on Contracts*. A conditional contract to serve as a crown-glass maker for *seven* years was held good, and not an unlawful restraint of trade. *Pilkington v. Scott*, 15 M. and W. 657; *Hartley v. Cummings*, 5 C. B. 247. The objection of restraint of trade depends on the fact whether what is required is necessary for the protection of the party. The adequacy of the remuneration is no element in the question. *Mallan*, 11 M. and W. 653; *Green*, 13 M. and W. 695. A fireman or stoker for a steamer is a labourer or artificer within the exception as to stamps. *Wilson*, 14 Jur. 366.

The contract is dissolved of consent, or by death of either party, but not by bankruptcy. *Thomas*, 1 Ad. and Ell. 685. The servant may be dismissed for misconduct, but not where slight and a first offence. *R. v. Devizes*, 4 M. and Ry. 681. Embezzlement is a good ground of dismissal. *Brown*, *Chitty* G. P. 81. Also disobedience to lawful orders. *Spain*, 2 Stark N. P. 256. So likewise sleeping from home frequently without master's leave. *Robinson*, 3 Esp. 235. And absence from duty, though involuntary, as subjecting himself to imprisonment. *Barton*, 2 M. and Selw. 329. But not where absence is warrantable, as seasonably looking for another service. *Heigham*, Bur. S. C. 690. And not where the absence is temporary for no bad purpose, and the master has suffered no serious injury thereby. *Armstrong*, 7 Ad. and Ell. 557. Custom of the trade, proveable by witnesses, in absence of bargain, regulates holidays. 13 Law Journal Rep. R. S. M. C. 41; also D. and M. 357. A servant betraying his master's secrets may be discharged. *Beeston*, 2 C. and P. 609. Or a clerk claiming to be a partner. *Amor*, 9 A. and Ell. 558. Immorality is a sufficient cause for dismissal. *Atkin*, 4 C. and P. 208. Such as a female servant being with child. Per Lord Mansfield—"Shall the master be bound to keep her in his house? To do so would be *contra bonos mores*; and in a family where there are

ENGLAND. young persons, both scandalous and dangerous." *Brampton*, Cald. 11. But it is not a ground for dismissal, that the servant had *previously* been the parent of a child. *Westmear*, Cald. 129. A servant marrying is no ground of dismissal; and a female servant marrying must serve out her time. *Wood's Just. b. i. c. 6.* A yearly servant hurt in the service cannot be dismissed, neither ought his wages to be abated. *Sudbrook*, 1 *Smith's Rep.* 59. Mere sulkiness is not sufficient of itself to warrant a dismissal. *Callo*, 4 C. and P. 518. A master may justify a dismissal by other and previous grounds. *Redgway*, 3 Ad. and Ell. 171. But not so if the other grounds were not known to him at the time of dismissal. *Cussons*, 11 M. and Wels. 161. This rule has been recently doubted. *Mercer*, 5 Q. B. 447. A servant dismissed may be ejected the master's house, and from any house which he possessed solely as servant. But if the house be not the master's, the possession cannot be said to be as a servant. 8 Ad. and E. 379. A servant may be dismissed for such misconduct which might not warrant the dismissal of an *apprentice*. A pupil and assistant to a surgeon was held to form a case between apprenticeship and service, and that occasional intoxication did not warrant dismissal, but real injury occasioned by error in compounding drugs was sufficient. *Wise*, 1 Car. and K. 662.

Wages are due for work, unless the contrary is made to appear—as where the servant comes on trial. But where the amount of wages is left to the master, a *reasonable* remuneration must be given. *Bryant*, 5 M. and W. 114. *Domestic* servants are entitled to wages for the period served, though dismissed; and if without cause, they are entitled to a month's wages in addition. *Robinson*, 3 Esp. 235; *Goodman*, 15 Q. B. 576. But clerks and such like are not entitled to any wages when they leave without cause, or are justifiably dismissed, as an entire contract cannot be apportioned. Per Lord Ellenborough—"If the contract be for a year, the year must be completed before the servant is entitled to be paid." *Spain*, 2 Stark N. P. 256. But if dismissed without justifiable cause, the servant is entitled to wages for the full time of hiring. *Collins*, 2 M. and P. 233. Wages are due during sickness, but master is not bound (except in cases of *apprentices*) to call in medical aid; but if he does so, then he is liable in payment, and cannot deduct the amount from wages. *Watling*, 1 C. and P. 132. Master cannot set off against wages claim for articles lost or broken by carelessness, but he must sue by cross action. *Le Loir*, 4 Camp. 134. It is an unlawful order to direct a servant to remain where her person or health is in danger. *Turner v. Mason*, 15 M. and W. 118.

A master is liable for the contracts of his servant within the scope of his employment. *Rusby*, 5 Esp. 76. A master is not liable for *criminal* offences of a servant, unless where acting under his command; but he is liable for *nuisance* done by his servant. *Tuberville*, Carth. 425, S. C. The master is liable for the *negligence* of his servant acting in the prosecution of his business, though not under his immediate direction or express orders—*Lyons*, 8 Ad. and E. 512; but not for his *wilful* and *malicious trespass*. *Croft*, 4 B. and Ald. 390. But not where servant is not in the course of master's employment. *Mitchell*, 17 Jur. 716. A sub-contractor is not in the relation of a servant such as to render the contractor liable for his negligence. *Rapson*, 9 M. and W. 710; *Knight*, 5 Exch. 71. But a person hired for a *special* business is a servant, and renders

the master liable for his acts within his power. 22nd Jan., 1855, *Saddler*, W. R. ENGLAND. A master is not in general liable in damage resulting from negligence of a fellow-servant, unless he has been negligent in selecting a servant of ordinary skill and care. *Wigmore*, 5 Exch. 354. Master is not liable to a person who was in the service, but without any right to be at the place where injured. *Lynch*, 1 Q. B. 29. Nor is he liable to a person who volunteers his service. *Degg v. Midland Railway Co.*, 1 H. and N. A master is not liable to a servant for injury sustained in his service, not arising from wilful misbehaviour on the part of the master. A master may moderately chastise an apprentice, but not a domestic servant, and he cannot delegate his authority in this matter to another. Masters and servants are entitled to defend each other when assaulted. Lord Mansfield in *Tickel, Lofte*, 215. Enticing a servant to leave his service subjects the party in damages to the master—*Blake*, 6 T. R. 221; but not for inducing a servant to enter into an engagement to commence after the expiration of an existing contract, though the servant had no previous intention of leaving. *Nichol*, 2 Esp. 734. The whole judges held that an action could be maintained for seducing a servant from his engagement with knowledge that he was the servant of another, and that it was immaterial whether the service had been actually entered upon or not, so long as the contract was in force; but the court was equally divided as to the extension of the remedy beyond the case of *menial* servants or labourers of the degree contemplated by the statute of labourers, 25 Ed. III. c. 1, to the higher classes. The case had reference to *Johanna Wagner*, the vocalist, withdrawn from one theatre to another. Justices Crompton and Erle were for the action. Justices Wightman and Coleridge were of opinion that the action could not be maintained. J. Coleridge observed—"The general rule of our law is to confine its remedies by action to the contracting parties, and to damages directly and proximately consequent on the part of him who is sued. As between master and servant there is an admitted exception; this exception dates from the statute of labourers, and both on principle and according to authority is limited by it." *Lumley v. Gye*, 2 Ell. and Bl. 216, 17 Jur. 827.

Malice must be proved where a servant gets a bad character, although it be false. Per Lord Mansfield, *Hargreave*, B. N. P. 8; *Rogers*, 3 B. and P. 587; *Taylor*, 20 L. J. (N. S.), Q. B. 313. The general rule is, that what is said by a master as to the character of a servant is privileged; and if a servant gets a situation in consequence of a character given by a former master, who afterwards discovers he was not entitled to such, it is his duty to communicate this to the new master, and this communication is also privileged. *Gardner*, 13 Jur. 826, 18 L. J. 336. Forgery of certificates of character is an offence at common law. *R. v. Toshack*, 13 Jur. 1011.

APPRENTICE.

1. Where there is a contract of apprenticeship by deed, and the apprentice unlawfully quits the service, the master can only recover damages up to the time of action, and not prospective damage up to the time when the term of apprenticeship would end. *Lewis v. Peachey*, 1 H. and C. 518.

2. A local statute provided that a corporation of the guardians of the poor should give bond for themselves and their successors for ever, to provide for sixteen poor boys, and put them out apprentices after they should have attained

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thirteen, and before fifteen. A pauper boy was bound in Canterbury (to which city the statute applied) by indenture dated the 13th April, 1821, sealed with the common seal of the guardians, to A. of Rochester, by whom the indenture was also executed, but the boy did not execute it; moreover, he was seventeen at the date of the indenture. Held that the indenture was invalid for not being executed by the boy, and also because he was beyond the age particularized in the local Act; and therefore he had acquired no settlement by service and inhabitancy in Rochester. *St. Nicholas, Rochester (churchwardens) v. St. Botolph Bishopsgate, London (churchwardens)*, 12 C. B. N. S. 645; 9 Jur. N. S. 101.

3. An expired indenture of apprenticeship sometimes remains with the master, and sometimes with the apprentice, but properly the custody is with the apprentice; and although shortly after the expiration of the apprenticeship search might be required amongst the papers of both, yet, after the lapse of some years, proof of search among the papers of the apprentice is sufficient to warrant justices in admitting secondary evidence of its contents. *Reg. v. Hinckley*, 9 Jur. N. S. 1054; 32 L. J. M. C. 158; 11 W. R. 663; 8 L. T. N. S. 270, Q. B.

4. The grounds of removal of a pauper showed a settlement in the appellant parish, derived from his grandfather, who, in 1791, was bound apprentice therein by the churchwardens of the respondent parish. In support of the settlement, a document, purporting to be a counterpart of the indenture of apprenticeship, was produced from the parish chest of the respondent parish, which was signed and sealed by the master of the apprentice, but not by the churchwardens. Search had been made for the original, without success, amongst the papers of the apprentice in the possession of his widow, but no search had been made amongst the papers of the master or elsewhere. Upon an appeal to Quarter Sessions, the justices admitted the document in evidence, and confirmed the order of removal. Held that they were justified in so doing. *Ib.*

5. K. was bound apprentice on the 29th Sept., 1845, to N. & Co., engineers, in a township of B. The apprentice's father covenanted to provide him with board and lodging during the continuance of the apprenticeship. The master's works closed on Saturdays at two o'clock. Throughout the term of apprenticeship the apprentice slept in the township of B., except on Saturday and Sunday nights; on those nights he slept at his father's, in the township of M. For the last two years of the term the apprentice lodged in the township of B., at C.'s, but C. stipulated that the apprentice should not sleep at her house on the Saturday nights. The apprentice slept at his lodgings on the night of Friday the 27th September, 1850, and at about two o'clock in the afternoon on Saturday he left off work, and went to M. to sleep, and slept there that night and the following Sunday night. On the following Monday morning he returned to N. & Co.'s, and worked there one week and then left. The apprentice slept more than forty nights in the township of B., and more than forty nights in the township of M. Held that his settlement was in the township of B., as his service did not end at two o'clock on Saturday the 28th September, and that his sleeping at M. on that night was not an inhabitation by indulgence, but in furtherance of the object of the apprenticeship. *Reg. v. Barton-upon-Irwell*, 9 Jur. N. S. 795; 32 L. J. M. C. 102; 7 L. T. N. S. 853, Q. B.

6. By a local Act directors and acting guardians of the poor, or any five of ENGLAND. them, were to bind out pauper apprentices. An indenture of apprenticeship was executed which purported to be between the guardians of the poor, of the one part, and the apprentice's mistress, of the other part; and in the operative part it witnessed "that the directors and acting guardians, by virtue of the Act, did put, place, and bind the pauper as apprentice." The covenants by the mistress were made with the guardians, and by one of them she bound herself not to assign over the apprentice without the consent of the directors and acting guardians, in witness whereof the guardians caused the seal of the union to be put to the indenture, and the indenture was subscribed by two justices. Held that by 3 & 4 Will. IV. c. 63, s. 2, the indenture was rendered valid. *Reg. v. Isle of Wight (guardians)*, 12 W. R. 744; 10 L. T. N. S. 370, Q. B.

7. A., a licentiate apothecary, covenanted to instruct B. in his art and mystery of an apothecary, in the best ways and means he could. B. having sued A. for a breach of this covenant, proved at the trial that at the time of the execution of the indenture of apprenticeship, A. kept an open house for compounding of the prescriptions of other practitioners as well as his own, but that he afterwards closed his shop to the public, and used it merely for the purpose of compounding medicines for his own practice, and ceased to be registered as an apothecary in the Medical Register. Held that A. did not thereby become disqualified from teaching B. pursuant to his covenant, so as to entitle the latter to a direction that A. had broken his covenant. *Batty v. Monks*, 15 Jr. Com. Law Rep. 388; 12 L. T. N. S. 832, C. P.

8. When an infant apprentices himself under an indenture of apprenticeship, such indenture is only voidable upon his attaining his majority; and if he intends to disaffirm it, he must do so within a reasonable time after he arrives at full age. What is a reasonable time is a question of fact for the court before which it is brought for decision. *Wray v. West*, 15 L. T. N. S. 180, Q. B.

9. It is a condition precedent to the liability of a master, on a covenant to teach an apprentice his trade, that the apprentice should be ready and willing to be taught by the master. *Rayment (or Raymond) v. Winton*, 1 L. R. Exch. 244; 12 Jur. N. S. 435; 35 L. J. Exch. 153; 14 W. R. 675; 14 L. T. N. S. 367.

MASTER AND SERVANT.

10. A workman entered into an agreement with a coal company to serve them as a collier, in consideration of wages to be paid to him fortnightly; and the company, in consideration of such service, agreed that he should not be discharged without twenty-eight days' notice in writing, unless in the case of misconduct. Held that this contract necessarily implied an obligation on the part of the master to find work for the servant, and to pay him wages every fortnight, and consequently was not bad for want of mutuality. *Whittle v. Frankland*, 2 B. & S. 49.

11. The plaintiff agreed on a Sunday to serve the defendant for a year, the service to commence on the Monday. On the Monday the plaintiff, with the knowledge and consent of the defendant, commenced the service, and received £20 on account. Held, in an action for wrongful dismissal within the year, in

ENGLAND. which an objection was taken that this was a contract for a year's service to commence on a future day, that the jury might infer a new implied contract on the Monday for a year's service from that day. *Cawthorn v. Cordrey*, 32 L. J. C. P. 152. Semble, also, per Willes, J., that a contract made on one day to serve for a year from the following day, is not within section 4 of the Statute of Frauds. *Ib.*

12. The defendant had agreed to act as servant to the plaintiff, and no other person, for seven years, with power to either party to determine the agreement or payment of £500, and subsequently engaged himself to another master without paying the £500. An injunction having been granted by Wood, V. C., on appeal, it was dissolved on the defendant bringing into court £600. *Thornton v. Kendall*, 11 W. R. 352, L. J.

13. An agreement, contained in several letters, was entered into between the plaintiff and the defendant, by which the former was to be employed by the latter as "commission agent, at a salary of £50 a-year, the engagement to be terminated at the expiration of any year, on giving three clear months' notice." The terms as to the duration of the engagement, and the mode of terminating it, were settled in the earlier letters; the amount of salary was agreed to in the later letters of the series, which later letters contained no mention of the three months' notice. The plaintiff entered on his duties on 1st April, 1860, and was discharged on 25th March, 1861, without any previous notice, receiving only one year's salary. In an action for a wrongful dismissal, in which he claimed to recover £50, the amount of a second year's salary: Held, first, that the arrangement as to notice, which had been previously agreed to, ran through all the subsequent letters, although it was not mentioned in them, and that all terms which had been previously settled were unaffected by the subsequent letters about the amount of remuneration. *M'Kean v. Cowley*, 7 L. T. N. S. 828, Exch. Held, secondly, that the damages were unliquidated, and the plaintiff was not entitled to recover the whole of the second year's salary, but so much as would compensate him for the loss of an opportunity of earning £50, against which should be set something for the saving of his time and labour by his not having had to earn it. *Ib.*

14. A driver of an omnibus, while driving his master's omnibus on one of its trips from A. to B., in regular course, at a point in the road wilfully and on purpose, and contrary to the express orders of his master, wrongfully and illegally endeavoured to hinder and obstruct the passage along the road of another omnibus belonging to a rival proprietor, by drawing his omnibus across the road. Held this was such an act as the master was not responsible for; and therefore it would be a misdirection for a judge to tell a jury that if the driver, in drawing, as he did, across the road to obstruct the other omnibus, although a reckless driving on his part, was nevertheless an act done by him in the course of his service; and to do that which he thought best to suit the interest of his employer, and so to interfere with the trade and business of the other omnibus proprietor, the employer was responsible; and that the liability of the master depended upon the acts and conduct of the servant in the course of the service and employment: and that the instructions given to the driver not to obstruct another, or hinder or annoy the driver in his business, were immaterial. *General Omnibus Co. v. Limpus*,

1 H. & C. 526; 9 Jur. N. S. 333; 32 L. J. Exch. 34; 7 L. T. N. S. 641, ENGLAND. Exch. Cham.

15. If a servant combines with another to tell knowingly a positive untruth to the prejudice of his master, an action will lie; and if he combines with his master to do the same thing to the prejudice of a third person, he will also be liable. *Cullen v. Thomson*, 4 Macg. H. L. Cas. 441; 9 Jur. N. S. 85.

16. If a keeper of a house of public resort instructs his servant to manage his house in his absence in such a manner as to amount to a misdemeanor, under 2 & 3 Vict. c. 47, s. 44, and the servant carries out such instructions, both are guilty, the master as principal, and the servant as aiding and abetting; and the latter may be convicted under 11 & 12 Vict. c. 47, s. 44. *Wilson v. Stewart*, 9 Jur. N. S. 1130; 8 L. T. N. S. 277, Q. B. The mere relation of master and servant has, however, in such case, of itself no effect or operation, either as making or unmaking the latter an aider or abettor within the meaning of the Act. *Ib.*

17. The defendant, a builder, contracted in writing with local commissioners to make a sewer. He verbally underlet to N. the excavation and brickwork, at a fixed price per yard, including fencing, watching, and lighting, the defendant supplying the bricks in his own carts, and removing the surplus clay from the cutting. N. employed men under him by the day. The defendant's name, as contractor, was over the door of an office near the works, but the commissioners employed the clerk of the works. The defendant stated that if the work were not done to his satisfaction he should have dismissed N. Owing to the insufficient lighting, the plaintiff fell into an unfenced part of the excavated trench, and was injured. After the accident N. put up a fence and a light. Held that the defendant was liable. *Blake v. Thirst*, 32 L. J. Exch. 189; 11 W. R. 1034; 8 L. T. N. S. 251.

18. A. having been engaged by wharfingers to land bags of guano (at so much a ton) and carry them into a warehouse, where they were piled by their day-labourers; and having been injured by the fall of some of the bags through bad piling: Held that it was for the jury, in an action by him against the wharfingers, whether the piling was done by their men under a separate and distinct employment, and if so, whether the fall of the bags was caused by their negligence, or that of their men and A. combined; and that in the former case the verdict should be for him; in the latter case, for the wharfingers. *Fletcher v. Peto*, 3 F. & F. 368, Cockburn.

19. In an action against wharfingers for an injury caused by negligence in the course of discharging a cargo, the fact being that they were paid by the merchant for the discharge: Held, no evidence that the men actually engaged in the work were in their employ. *Woodward v. Peto*, 3 F. & F. 389, Martin.

20. Where servants are engaged in one common object, an injury sustained by one servant in consequence of the negligence of another servant does not give a right of action against the master. *Waller v. South-Eastern Railway Co.*, 9 Jur. N. S. 501; 32 L. J. Exch. 205; 11 W. R. 731; 8 L. T. N. S. 325.

21. The guard of a train and the plate-layers, whose duty it is to attend to the rails over which the train passes, are engaged in one common object, the safe conduct and transit of the train; and therefore no action can be maintained

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against the company by the representative of the guard of a train killed by the train running off the line, in consequence of the neglect of the ganger of the plate-layers to renew the decayed metals which fasten the chairs to the sleepers of the railways. *Ib.*

22. An action for work and labour will lie if a servant is engaged for a fixed period, and the master, without dismissing him, refuses to supply him with work. *Cook v. Sherwood*, 11 W. R. 595, C. P.

23. S., the agent of an insurance company, being indebted to the company, and being pressed for payment, it was arranged that the plaintiff should pay the money to the company, and that the company should appoint him and S. as joint agents with the same rates of payment and remuneration as before. A deed was executed containing a covenant that in case the company should at any time thereafter displace S. from his appointment as agent there, that they should and would forthwith repay to the plaintiff the money so paid by him. Subsequently the company transferred the whole of their business and liabilities to another company, and refused to pay the plaintiff the money so advanced by him. Held, in an action to recover the amount, that there was an implied covenant on the part of the company that they would not do anything of their own voluntary act by which it should be impossible for them to keep S. in their employ any longer, and therefore they were liable in an action by the plaintiff. *Stirling v. Maitland*, 34 L. J. Q. B. 1; 13 W. R. 76; 11 L. T. N. S. 337.

24. A written agreement between A. and his traveller provided for the travelling expenses of the latter, but did not lay down any mode in which they should be ascertained and stated. Before the agreement the traveller had been in the habit of stating after each journey those expenses as a gross sum, omitting all details, and this practice continued for some years after it. Held that a contract so to state and accept the amount of those expenses was to be implied from this course of conduct, and that the employer had no power to determine it during the stipulated term. *Hunter v. Belcher*, 10 L. T. N. S. 548, L. J.

25. A huntsman is a menial servant, and therefore the hiring of a huntsman, though in terms for a year, and upon conditions which can only be fully carried out by a service enduring for the full period of a year, is subject to the ordinary condition that it may be determined by either party at a month's notice. *Nicoll v. Greaves*, 17 C. B. N. S. 27; 10 Jur. N. S. 919; 33 L. J. C. P. 259; 12 W. R. 961; 10 L. T. N. S. 531.

26. A person having been retained as a traveller on an oral contract for more than a year at a quarter's salary, and his employer at the end of a quarter having given up his business, but not having expressly dismissed him, is entitled to recover the next quarter's salary under an *indebitatus* count. *Cook v. Sherwood*, 3 F. and F. 729, Cockburn. Ruling upheld by the Court of Common Pleas, 11 W. R. 595.

27. A first count alleged that one of the defendants was a contractor for the supply of beef to the navy, and the other, his foreman, having the control and management of the supply of cattle and of the slaughter of the same; that it was the duty of the defendants to take care that sound and healthy beasts should be supplied and slaughtered, and that none others should be supplied for the purpose; yet that the defendants supplied and slaughtered diseased cattle,

whereby the plaintiff, who was employed to cut up the carcasses of the cattle, ENGLAND. became infected with the disease of the cattle. A second count, that the defendants, by representing slaughtered carcasses of cattle to be sound, caused and procured the plaintiff to cut up the same; that the beasts were unsound and diseased, whereby he contracted the disease and was permanently injured. Held that the counts were bad. *Davies v. England*, 10 Jur. N. S. 1235; 33 L. J. Q. B. 321. A third count stated that the defendants, well knowing that certain carcasses of slaughtered cattle were diseased and dangerous to persons cutting up the same, invited and employed the plaintiff, who was ignorant of the diseased state of the carcasses, to cut up the same; that he, not knowing the premises, did on the invitation and request, and on the employment of the defendants, cut up the carcasses, whereby he became infected and was injured. Held a good count. *Ib.*

28. In an action under 8 & 9 Vict. c. 93, by an administratrix of S., the summons and plaint alleged that the defendants were in possession of a distillery, and of lofts and stores connected therewith, and that S. was employed by them as a labourer to do work in and about the distillery at night; and that S. had, while so employed, access by the license of the defendants to one of the lofts at night, and used one of the lofts for the purpose of sleeping during the intervals of the night, when he was not actually engaged in his employment: yet the defendants, well knowing the premises, wrongfully and negligently permitted an aperture in the floor of the loft to remain open without being properly guarded and lighted, by reason whereof S., whilst passing in the night along the floor of the loft in pursuance of the license, fell through the aperture and was wounded and injured, and by reason of the wounds and injuries thereby occasioned to him, S. afterwards, within twelve calendar months, died. Held that the summons and plaint disclosed neither a contract nor a duty binding on the defendants to guard or light the aperture. *Sullivan v. Waters*, 14 Jr. Com. Law Rep. 460, Exch.

29. The defendant sent some bales of cotton to a warehouse, and they were piled there by his men, under the direction of the warehouseman's foreman. Owing to a fault in the piling the pile fell and hurt the plaintiff. Held that the defendant was not liable. *Murphy v. Caralli*, 10 Jur. N. S. 1207; 34 L. J. Exch. 14; 13 W. R. 165.

30. A passer by who is casually appealed to by a workman for information respecting a thing which the latter is doing in a public thoroughfare, is not to be considered a volunteer assistant, so as to exonerate the workman's master from responsibility for an injury resulting to the former from the workman's negligent mode of doing the work. *Cleveland v. Spier*, 16 C. B. N. S. 399.

31. The unloading of a cargo of corn, for which the defendants were paid by the owner, being done by men engaged and paid by a ganger or contractor with whom the defendants contracted, they having no control over the men: Held not liable for an injury caused by their negligence to a corn meter in the service of the city, engaged in measuring the cargo. *Innocent v. Peto*, 4 F. and F. 8, Crompton.

32. In an action by a widow of a labouring man who had been employed with others by the defendant to shore up an arch which had sunk, and was killed by its falling upon him: Held that the question was not as to the original construction of the arch, but as to the knowledge of the danger at the time of the accident, and whether the defendant had any better means of knowing of it than the

ENGLAND. deceased, and if not, then the jury should find for the defendant. *Ogden v. Rummens*, 3 F. and F. 751, Bramwell.

33. The plaintiff was employed to do ballasting for a railway company, and a fellow-servant was employed to lay tram-plates for them; and whilst they were so employed the plaintiff, through the negligence of the fellow-servant, was injured. Held that they were engaged in a common employment, and that the company was not liable for the damage. *Lovegrove v. London, Brighton, and South-Coast Railway Company*, 16 C. B. N. S. 669; 10 Jur. N. S. 879; 33 S. J. C. P. 329; 12 W. R. 988; 10 L. T. N. S. 718.

34. The plaintiff was engaged as a scaffolder for the defendants, who were builders, and they employed a general manager of works, through whose negligence in not furnishing proper materials the plaintiff fell and was injured. Held that the defendants were not liable for the injuries. *Gallagher v. Piper*. *Ib.*

35. A master cannot maintain an action, *per quod servitium amisit*, against a railway company for an injury to his servant whilst a passenger on the company's railway, caused by neglect of their duty to safely carry the servant according to their contract with him as such passenger, unless the master was a party to the contract. *Alton v. Midland Railway Co.*, 19 C. B. N. S. 213; 11 Jur. N. S. 672; 34 L. J. C. P. 292; 13 W. R. 918; 12 L. T. N. S. 703.

36. To render a master liable for an injury to one in his employ, through the negligence of another person also in his employ, it must be shown that the latter was placed by the master in such a position of trust and authority as to be fairly considered as his representative in the establishment. *Murphy v. Smith*, 19 C. B. N. S. 361; 12 L. T. N. S. 605.

37. A defendant having purchased some timber of the plaintiff, a timber merchant, was permitted by the plaintiff to use a shed of the plaintiff's for the purpose of working up the timber. The defendant, with the knowledge of the plaintiff, employed a carpenter to work up the timber in the shed. The carpenter, in lighting his pipe, set fire to the shed, which was burnt down. Held (affirming the decision of the Exchequer, 3 H. and C. 256), first, that the defendant's right to use the shed was not a letting by the plaintiff, but a mere license to use the shed. *Williams v. Jones*, 3 H. and C. 602; 11 Jur. N. S. 843; 13 W. R. 1023; 13 L. T. N. S. 300, Exch. Cham. Held, secondly, that the negligence of the carpenter in setting the shed on fire was not in the course of his employment as the defendant's servant, so as to render the defendant liable. *Ib.*

38. The owner of a house in the metropolis employed a contractor to make a drain from his house to the main sewer, under the powers given by the 19 and 20 Vict. c. 120. The contractor made the drain, but filled up the ground so negligently where it crossed a public footway, that it subsided and left a hole, into which a person fell and was injured. Held that the owner of the house was liable for the injury; that the statutable power given by sections 77 and 110 for making the drain, also imposed on the owner of the house the duty of filling up the cutting across the footway properly; and that he was not excused by reason of his having employed to perform the work a contractor who omitted to do his duty. *Gray v. Pullen*, 34 L. J. Q. B. 265; 11 L. T. N. S. 569, Exch. Cham.

39. A workman cannot recover damages from his employers for injury sustained by him while at work in their mill, and resulting from the building having

been originally negligently constructed, unless personal negligence is proved ENGLAND. against his employers themselves (or against some person acting by their orders), either in having given directions how the building should be constructed, or in having knowingly intrusted the execution of the work to an incompetent person. *Brown v. Accrington Cotton Spinning and Manufacturing Company*, 3 H. and C. 511; 34 L. J. Exch. 208; 13 L. T. N. S. 94.

40. Where servants are engaged in a common employment and with a common object, injury sustained by one servant in consequence of the negligence of a fellow-servant gives no right of action against the master, although the servants are not engaged in effecting the same common immediate object, but are occupied in different departments of duty. *Morgan v. Vale of Neath Railway Company*, 5 B. and S. 736; 34 L. J. Q. B. 23; 14 W. R. 144, Exch. Cham.

41. M. was employed by a railway company as their servant, to do work as a carpenter to the roof of an engine-shed at their station, whilst the railway traffic was being carried on in it by their servants. In the course of this employment he was standing upon a scaffold which was erected near to one of the turn-tables. The porters of the company, who were engaged in shifting a locomotive engine, allowed it to project so far beyond the turn-table that, in turning it, the end of the engine, by their negligence, struck against a ladder which constituted one of the supports of the scaffold. The scaffold gave way in consequence; M. was thrown out and injured. In an action by him against the company: Held (affirming the judgment of the Queen's Bench, 5 B. and S. 570) that the nature of his employment was such as to make him and the servants by whose negligence he suffered servants in a common employment, within the rule which exempts the employer from responsibility to his servant for the consequence of the negligence of a servant in a common employment. *Ib.*

42. The plaintiff was employed to work in a mine of the defendants. The defendants employed an underlooker, whose duty it was to see that the roof of the mine was propped as required when the mineral was withdrawn. The underlooker omitted to see that the roof was propped, and thereby a stone fell and injured the plaintiff. Held that the underlooker was a fellow-servant of the plaintiff; and that as there was no evidence to show that the defendants were negligent in selecting a proper underlooker, or in putting the mine in proper order, the defendants were not liable. *Hall v. Johnson*, 3 H. and C. 589; 11 Jur. N. S. 180; 34 L. J. Exch. 222; 13 W. R. 411; 11 L. T. N. S. 779; Exch. Cham.

43. When the hiring is expressly for a term certain, a custom of the trade for a master or a servant to determine it at any time without notice is inadmissible to control the contract. *Peters v. Staveley*, 15 L. T. N. S. 275, Q. B.

44. In estimating damages for the wrongful dismissal of a servant, the jury should take into account the salary, and not any commission obtained by him. *Hartland v. General Exchange Bank*, 14 L. T. N. S. 863, Willes.

45. A servant is not entitled to his full salary for the unexpired period of the contract for service, but that is to be reduced by the probabilities of his having other employment during such period. *Ib.*

46. The employer being a company afterwards ordered to be wound up, that fact also should be taken into consideration in estimating the loss sustained by the servant through his dismissal. *Ib.*

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47. If a servant of a horse-dealer warrant his employer's horse on sale without authority, his master is bound thereby. *Howard v. Sheward*, 12 Jur. N. S. 1015; 36 L. J. C. P. 42.

48. When a business is conducted so as to be a public nuisance, the owner is liable to be indicted, although the nuisance is entirely occasioned by the conduct of his servants in disregarding his directions, and although he has no knowledge of the existence of the nuisance. *Reg. v. Stephens*, 1 L. R. Q. B. 702; 35 L. J. M. C. 251; 14 W. R. 859; 14 L. T. N. S. 593.

49. An owner of a quarry on the margin of a navigable river, being very old and infirm, did not personally superintend it; he, however, gave directions to his men to dispose of the refuse in a certain way, and conduct the business in a proper way. These directions were disregarded, and the refuse was suffered to fall into the river, whereby its navigation was obstructed. Upon an indictment for the nuisance against him: Held that he was liable. *Ib.*

50. The plaintiff was getting out of the defendant's omnibus before it stopped, when the conductor told her to wait. She continued to move towards the door, and he took her hand and supported her to the step, from which she fell to the ground. Held that this was not such negligence on the part of the servant as to render the master liable. *Lingard v. Kirkpatrick*, 15 L. T. N. S. 245, C. P.

51. The rule which exempts a master from liability to a servant for injury caused by the negligence of a fellow-servant, applies when, although the immediate object on which the one servant is employed is very dissimilar from that on which the other is employed, yet the risk of injury from the negligence of the one is so much a natural and necessary consequence of the employment which the other accepts, that it must be included in the risks which have to be considered in his wages. *Morgan v. Vale of Neath Railway Company*, 1 L. R. Q. B. 149; 35 L. J. Q. B. 23; 13 L. T. N. S. 564, Exch. Cham. *Ante*, 40, 41.

52. Therefore, whenever an employment in the service of a railway company is such as necessarily to bring the person accepting it into contact with the traffic of the line, risk of injury from the carelessness of those managing that traffic is one of the risks necessarily and naturally incident to such employment, and within the rule. *Ib.*

53. A hole had been made in the floor of a factory, for the repair of a shaft, by one of the servants of the defendant. A fellow-servant, ignorant of this, opened a door close to the gap, fell through it, and was injured. The master is not liable for the injury so done to the servant in the same employ by the negligence of a fellow-servant. *Bottomley v. Brooks*, 15 L. T. N. S. 19, Lush.

54. B. was employed by a railway company as a labourer to assist in loading what is called a pick-up train with materials left by platelayers and others upon the lines. One of the terms of his engagement was, that he should be carried by the train from Birmingham (where he resided, and whence the train started) to the spot at which his work for the day was to be done, and be brought back to Birmingham at the end of each day. As he was returning to Birmingham after his day's work was done, the train in which B. was, through the negligence of the guard who had charge of it, came into collision with another train, and he was injured. Held, that inasmuch as he was being carried, not as a passenger, but in the course of his contract of service, there was nothing to take the

case out of the ordinary rule, which exempts a master from responsibility for an ENGLAND. injury to a servant through the negligence of a fellow-servant when both are acting in pursuance of a common employment. *Tunney v. Midland Railway Company*, 1 L. R. C. P. 291; 12 Jur. N. S. 691.

55. The defendant was a maker of locomotive engines, and the plaintiff was in his employ. An engine being hoisted, for the purpose of being carried away, by a travelling crane moving on a tramway, resting on beams of wood supported by piers of brickwork. The piers had been recently repaired, and the brickwork was fresh. The defendant retained the general control of the establishment, but was not present; his foreman or manager directed the crane to be moved, on having first before ordered the plaintiff to get on the engine to clean it. The plaintiff having got on the engine, the piers gave way, the engine fell, and the plaintiff was injured. This was the first time the crane had been used, and the plaintiff employed in this manner. Held that there was no evidence to fix the defendant with liability to the plaintiff; for that, assuming the foreman to have been guilty of negligence on the present occasion, he was not the representative of the master so as to make his acts the acts of the master—he was merely a fellow-servant of the plaintiff, though with superior authority, and there was nothing to show that he was not a fit person to be employed as foreman; neither was there any evidence of personal negligence on the part of the defendant, as there was nothing to show that he had employed unskilful and incompetent persons to build the piers, or that he knew, or ought to have known, that they were insufficient. *Fellham v. England*, 1 L. R. Q. B. 33; 36 L. J. Q. B. 14; 15 W. R. 151.

56. A member of two unenrolled benefit clubs, paid as secretary, and intrusted with the funds to deposit in the bank in the joint names of himself and the treasurer, dishonestly appropriating to himself the sums intrusted to him, cannot be found guilty of larceny as a servant, nor of embezzlement nor of larceny as a bailee. *Reg. v. Marsh*, 3 F. & F. 523, Keating.

57. A. was secretary to a benefit building society. It was no part of his duty, as prescribed by the rules, to receive money for the society; but, according to the course of business, the subscriptions were frequently received by him, and when mortgages were redeemed, the money was paid to him as secretary but for and upon receipts signed by the trustees. Having embezzled the redemption money upon a mortgage so paid to him, he was indicted under 7 & 8 Geo. IV. c. 29, s. 47. Held that there was evidence from the jury that he was employed by the trustees as their servant to receive money on their behalf. *Reg. v. Hastie or Hartie*, 9 Cox. C. C. 264; 1 L. & C. C. C. 269; 9 Jur. N. S. 235; 32 L. J. M. C. 63; 11 W. R. 293; 7 L. T. N. S. 795.

58. A. was indicted for embezzlement whilst clerk to B. and others. A. was secretary and cashier to a company calling themselves the R. M. and H. Coal Company (Limited), the number of members exceeded twenty, the name of the company was over the door, the shares were transferable without the consent of the other shareholders, and a minute book in which resolutions were entered was kept. No certificate of incorporation was put in evidence. Held that he was rightly convicted as the servant of B. and others, there being no evidence which ought to have been left to the jury that the company was incorporated. *Reg. v.*

ENGLAND. Frankland, 1 L. & C. C. C. 276; 9 Cox C. C. 273; 9 Jur. N. S. 388; 32 L. J. M. C. 69; 11 W. R. 346; 7 L. T. N. S. 799.

59. A person who is employed to get orders for goods, to receive payment for them, but who is at liberty to get the orders and receive the money where and when he thinks proper, being paid by a commission on the goods sold, is not a clerk or servant within the meaning of the Act 24 & 25 Vict. c. 96, s. 63. *Reg. v. Bowers or Bower*, 1 L. R. C. C. R. 41; 12 Jur. N. S. 550; 35 L. J. M. C. 206; 14 W. R. 803; 14 L. J. N. S. 671.

60. An assistant overseer of a parish, elected by the parishioners in vestry, under the 59 Geo. III. c. 12, s. 7, who fix his duties and salary, is to be deemed the servant of the inhabitants of the parish, and to receive money collected by him for the poor rate levied upon the parish as such servant, and may be so described in an indictment for embezzling such moneys so received. *Reg. v. Carpenter*, 1 L. R. C. C. R. 29; 12 Jur. N. S. 380; 35 L. J. M. C. 169; 14 W. R. 773; 14 L. T. N. S. 572.

61. A committee formed of the members of two friendly societies, for the purpose of conducting a railway excursion, appointed persons to sell the excursion tickets to the members of the societies; and the money received from the sale of the tickets was to be paid over to a specified person, and was to belong to the two societies in certain proportions. The prisoner, who was a member of the committee, was one of those nominated to sell tickets, and a certain number of tickets was intrusted to him by the committee to sell without any remuneration for his services. Of these he sold some, but instead of paying over the sum received for the sale he fraudulently appropriated it to his own use. He received no remuneration for his services. Held that he was not liable to be convicted on an indictment charging him, as servant to the other members of the committee, with embezzling their moneys. *Reg. v. Bren*, 9 Cox. C. C. 308; 33 L. J. M. C. 59; C. C. R.

62. A bailiff of a county court who has fraudulently appropriated the proceeds of levies made under the process of the county court, cannot for this misconduct be convicted on an indictment as a servant of the high bailiff, with having embezzled the moneys of the high bailiff, his master. *Reg. v. Glover*, 1 L. & C. C. C. 466; 9 Cox. C. C. 900; 10 Jur. N. S. 710; 33 L. J. M. C. 169; 12 W. R. 885; 10 L. T. N. S. 582.

The following points were decided in Scotland:—

I. APPRENTICES.

SCOTLAND. 1. An informal indenture is made valid by entering on the service. The apprentice had been for three years in the service. Observed on the Bench—“As in this case there is full evidence of an agreement between the parties, there would have been good ground, altogether independent of the indenture, for compelling either of them to enter regularly into a written contract.” 19th July, 1781, *Rymer*, Mor. 5726; 31st Jan., 1807, *Neil*, Hume’s Dec.

2. A present of five guineas to the master’s wife, after signing the indenture, held to nullify the same under the Act 8 Anne, c. 9, that sum not being set forth in the indenture. 1727, *Horseburgh*, Mor. 585. But a present of one guinea to the master’s wife, half a year after the indenture, was found not to void

the indenture, but to expose to forfeiture of double the amount. 1738, M'Leod, SCOTLAND. Mor. 585.

3. An indenture to the shoemaking had no premium expressed in the indenture, though a bill for £3 3s. was given in lieu thereof. Both bill and indenture held null under the statute. 1754, Donaldson, Mor. 587.

4. A boy was apprenticed to an Aberdeen advocate, to whom three bills for 100 merks each were granted by the mother, as apprentice-fee. The apprentice died in three months. The fee was not stated in the indenture, but in a certificate attached to an extract, and stamped with the proper duty, after the death of the apprentice. The court sustained the stamping, and held that the whole fee was due, "in respect the non-performance of the contract was not occasioned by any fault on the part of the defender." 1760, Shepherd, Mor. 589. But a proportion of fee was held returnable on a *master's* death. 1683, Ogilvy, Harcarse, p. 34.

5. A master surgeon died within two years of an indenture of four years' duration. £20 of fee was paid, and the master was to give bed and board. In an action for return of *half* of the fee, the court by a majority awarded only *one-third*, "seeing the master had little benefit by his apprentice's service during the two years it stood; and sustained the answer that the representatives offered to instruct him by a man past his apprenticeship, and he refused." 1711, Cutler, Mor. 583.

6. An apprentice locksmith, bound for six years and two months, enlisted within sixteen months of the lapse of the term. His two cautioners were charged to pay the stipulated penalty of £15. One cautioner died. The other suspended, because, 1st, That he was only liable for one-half; 2d, that the master should have reclaimed the apprentice. The court modified the penalty to £8, and refused costs. 1758, Sibbald, Mor. 588.

7. A cautioner for an apprentice goldsmith, being sued for damages because of the desertion of the apprentice. Defence—an offer back within two or three days. Defence sustained. 1686, Malvenius, Mor. 583. See Case 13.

8. An apprentice to a wright left, and on being charged, together with his cautioner, for the penalty, found not sufficient to relieve that the master had become a smuggler, and had left the wright shop, "the work, however, being daily carried on by experienced journeymen. There was no formal complaint entered, nor protest taken by the apprentice before his desertion, which had great weight with the court." 1775, Gardner, Mor. 593.

9. A master charged his apprentice with a small theft, before a justice, which he confessed, and was soon liberated on bail, and never convicted; and having immediately offered to serve out his indenture, the master refused to receive him, and prosecuted for damages. The court found, under the indenture, the apprentice and his cautioners liable for the one shilling of penalty each day during the remainder of the term, and without deduction for board, which the master, by the indenture, was bound to give. 1776, Maxwell, Mor. 593.

10. An apprentice was bound to the Alloa Glass-house Company. The company gave up business, and sold their stock, "including the services of the workmen and apprentices engaged to their works." The Edinburgh Glass-house Company purchased, and the apprentice continued with them for several

SCOTLAND. months, and then engaged with another. The sheriff granted warrant to imprison until caution was found to return to the work; but on a suspension, a majority of the court, differing from the Lord Ordinary (Gardenston), suspended the warrant. "The court at first adhered to the Lord Ordinary's judgment, but afterwards the idea prevailed that indentures of apprentices were in their nature so far from being a subject of commerce that the specialty of this case could not justify a transference." 1789, Edin. Glass Company, Mor. 597. But indentures were found to subsist, though there remained only one partner in the original firm—13th Feb., 1827, Campbell; and where the apprentice continued in the service of one of the partners of a dissolved company. 11th July, 1837, Pagan. Per Lord Jeffrey—"The death or retirement of a partner, though it might, in strictness of law, import a dissolution of the company, would not necessarily discharge the obligations of an apprentice if the business were afterwards carried on as before, and he continued for a course of years to give and take implement in any way of the indenture."

11. An apprentice letterpress printer was held bound to teach the apprentices, receiving the usual gratuity allowed by the practice of the trade. Per Lord President—"The master is not bound to keep a single journeyman; then it is clear the elder apprentices must teach the younger, for it is impossible the master could attend to them all himself, and at the same time carry on the other branches of his business. Apprentices must therefore teach, and it is their most natural employment." 21st Nov., 1811, Ballantyne and Company.

12. An apprentice was bound to a currier, who ceased to take out the statutory license, and thereby it was held the indenture fell. 16th Nov., 1826, Watson.

13. An apprentice for three years deserted in the third year; but the father, his cautioner, offered him back within the week, with an offer to work for the absent days in terms of the indenture, but the master refused to receive him, and charged for the penalty. The court suspended the charge. 13th Feb., 1828, Learmonth.

Note.—The following extracts are from the notes of Lord Cringletie, the Lord Ordinary in the case:—

"By the true interpretation of the contract between a master and an apprentice, the former becomes, to a limited extent, placed *loco parentis* to the latter, from which emanate various reciprocal duties and affections. The master is not to expect from his apprentice, particularly if he be a boy, implicit and unexceptional performance of the obligations in the indenture; but must overlook and pardon, though with proper censure, deviations and transgressions which do not amount to vice, or go the length of rendering the connection of the parties so disagreeable as to make it impossible to continue the execution of their contract. The same observation applies to the apprentice. In some cases the master's business diminishes and abates, so as to afford little opportunity for instructing his apprentice. In others, the master happens to be of an irritable temperament, and behaves at times with harshness which, in strictness of rule, cannot be completely justified. In the intercourse of mankind there must be a mutual forbearance to preserve the order of society, where the conduct of one to another does not amount to an intolerable breach. The

master must overlook the failings of his apprentice, if not vicious and intolerable, and the latter those of the same sort of his master. In the case to which these observations apply, there seems to have been in contemplation, what must always occur with young men, or rather boys—namely, the foresight of idleness, and the apprentice absenting himself from duty without leave. But this is not declared to be a breach of indenture.” “The clause in the indenture presupposes days of absence; for he is to serve two days for each day’s absence without leave. The Lord Ordinary does not mean even to insinuate that the apprentice has right to serve and be absent alternate days, or weeks, or months; and offer to make reparation by serving double the time of absence after the expiration of the indenture. On the contrary, such conduct would amount to an intolerable breach of the obligation in the indenture to serve faithfully and honestly, as it would be impossible for the master to place any reliance on the service of his apprentice. But what the Lord Ordinary means is, that the indenture presupposes an occasional absence for days without leave, which is not considered to amount to a breach; because the apprentice is bound to serve two for one, which he cannot do if he be not received back by his master after he returns from absence, and consequently infers the understanding of parties, that notwithstanding some cases of absence, the indenture was to remain in force.”

14. An apprentice (a minor) at a printfield, under an indenture without cautioners, deserted. The sheriff granted warrant to imprison “until he found caution to return to his service, and implement and fulfil his part of the indenture, and that under the penalty of £10.” Caution was accordingly found, and the apprentice returned, and again deserted. The cautioner offered the boy back, but the master refused him, because of a criminal charge in which he was implicated. In a suspension on a charge on the bond, the court held it competent to compel an apprentice under a summary warrant to return to his service, but not to find caution to fulfil the conditions of his indenture. 9th Feb., 1826, Wright. Per Lord Pitmilley—“An apprentice may be summarily ordained to return to his service, but I doubt very much whether he can be compelled by summary imprisonment to find caution to fulfil all the conditions of his indenture.” See leading cases as to power of summary imprisonment against a *servant, not an apprentice*. 4th June, 1824, Raeburn; 9th July, 1825, Gentle; 26th Feb., 1846, Lees; 18 Jur. 273.

15. A boy, aged sixteen, entered into an indenture with consent of his elder brother, who was his cautioner. His uncle was his curator-nominate, and knew of the indenture. The boy having deserted, the magistrates of Glasgow decreed him to return to his service; and the court sustained the judgment. 7th March, 1829, Harvie.

16. An apprentice (a minor) to a calico printer deserted, and the sheriff, after taking his declaration, “ordained him to return to his service within twenty-four hours, and continue therein, and to fulfil his engagements.” He returned, and again deserted; whereon, without any new application or again hearing the apprentice, the sheriff granted warrant to commit him to prison, “therein to be detained until he finds caution, or otherwise satisfy the master.” On a suspension, after the apprentice had been eight months in prison, the court liberated.

SCOTLAND. Per Lord Moncrieff—"As to imprisonment till the complainer finds caution to perform the stipulations of the contract, that is out of the question. It would just amount to imprisonment for three years for not performing his duties during the course of the indenture." 21st June, 1832, Stewart.

17. An apprentice wright, under an indenture with cautioners, deserted, and was committed until he found caution to the extent of £30 "to return to his service, and continue therein, in terms of the articles of indenture, until the expiry of the time stipulated therein." The court were equally divided on the legality of the warrant: Lord President (Hope) and Lord Gillies were against the warrant, and Lords Craigie and Balgray in its favour. Bill was passed of consent, and no further proceedings are reported. 20th November, 1832, Bookless.

18. A verdict for £20 was awarded against a master baker, for wrongfully causing his apprentice to be apprehended for alleged stealing a bun, from which charge he was acquitted. 16th March, 1833, Langmuir, 11 Shaw, 571.

19. A verdict was given in favour of an apprentice to a saddler, who refused to do menial services (not mentioned in the report), not in the line of his trade. Per Lord Pitmilley—"The master and apprentice are only bound in relation to the trade. If the apprentice agrees to go out of his trade, well; but he is not bound to do so. If it had been alleged that there was a separate contract to the contrary, the party making the allegation would have been bound to prove it. Some evidence was adduced as to the custom of the country, but no such question is here: the only question is on the indenture, which is the foundation of the contract; and I submit it as a proposition in law, that when the terms of an obligation are clear, we are not entitled to explain them by custom." 26th Sept., 1818, Peter, 2 Murray's (Jury) Reports, 30.

20. An apprentice barber in Dundee, bound by indenture not to absent himself, holiday or week-day, was found not bound to work any portion of the Sabbath (House of Lords), reversing decision of the Court of Session, finding him bound to work between the hours of 7 and 10 o'clock on the Sabbath morning. Per Lord Brougham—"It would have been a most unfortunate circumstance had your lordships felt bound to give your support to the judgment of the court below, which appears for the first time to have decided that what has been prohibited by the statute—namely, handy labour and working on the Sunday—can be enforced by the decision of a court of justice under indenture of apprenticeship." 20th Feb., 1837, Philips, 9 Jur. 462.

21. The *justices* found that an indenture was not binding, in a question with the first master, where the second master was aware that the apprentice was already bound, and their judgment was affirmed. 31st May, 1825, M'Gregor, 4 Shaw, 51.

22. A charge for payment of penalty was suspended, and the apprentice liberated, because of "acts of intemperate and excessive chastisement, and not provoked or excused by any material fault on the lad's part at the time, though he had misbehaved on other occasions." 1794, Smart, Hume's Decisions.

23. A cautioner in an indenture being charged on letters of horning for the penalty in the indenture, on the ground of the apprentice having deserted, the court passed a suspension without caution. "If the apprentice had really been

guilty of desertion, the master might have applied to the *justices* or sheriff to *SCOTLAND*. get him to return, and he might have sued the cautioner for damages." 7th July, 1737, Munro.

24. A minor cannot enter into an indenture without consent of his father or guardian. 14th Nov., 1797, Hume's Dec. 422. The apprentice was eighteen years of age.

Note.—This was a special case, and there was a reduction on the ground of fraud. It has not been followed in practice.

25. Where a workman, aged seventeen, and earning wages, entered into a contract with his employer for two years, deserted, and was convicted under the Act 4 Geo. IV. c. 34, it was held that minority was no objection to the contract, Per Lord Justice-Clerk—"The court would set aside a contract in which advantage had been taken of the minor. But is it to be said that a young man of seventeen years of age, able to earn 20s. in the week, requires such protection?" 16th June, 1853, Argo (*Justiciary*), 25 Jur. 450.

II.—MASTER AND SERVANT.

26. Every person of full age, and not under any legal disability, may enter into a contract of service.

27. A pupil ought to have the consent of his father or guardian; and where he has not such consent, the contract is challengeable. 1667, Biantyre, M. 8991; 1797, Low, Hume's Cases, 422; 24th Nov., 1836, Keiths, 9 Jur. 73. But if a minor falsely represents himself as being major, he is bound by his contract.—7th March, 1829, Harvie, 7 S. D. 560.

28. If a minor has no guardians, or has been forisfamiated, and has already been at service and acting for himself, the contract appears to be valid if fair in its terms. 13th Feb., 1827, Campbell, 5 S. D. 335; 16th June, 1853, Argo, 25 Jur. 450.

29. Persons blind or deaf and dumb may contract if they have the use of reason, and show their understanding of the engagement. Brodie's Stair, b. i. t. 115, s. 11; 1792, Ross, M. 16853.

30. A contract made by a person in a state of intoxication, so great as to obscure his reason, is null. 3rd June, 1823, Hamilton. But he must be in such condition as to be deprived of the use of reason, and so incapable of contracting. 16th June, 1864, Provan, 36 Jur. 611.

31. A married woman may, without her husband's consent, hire domestic servants; but she cannot, without such consent, hire herself as a servant, and the husband can demand her person from the master.

32. Where a female servant marries, this appears no ground of dismissal. Her husband, by the law of Scotland (differing from that of England and of France), is entitled to demand her person, but he is liable in damages for breach of contract by his wife through his interference. 2 Fraser, 398.

33. A hiring by an overseer or agent, duly authorized, binds the master. 1815, Narbonie, Hume's Dec. 353.

34. A contract of service may be made verbally for any period not exceeding one year, and may be proved by witnesses.

35. If a verbal contract be made in England, it may be valid for more than

SCOTLAND. one year, though it be implemented in Scotland, as the terms of a contract are interpreted by the laws of the country where entered into. 5th Feb., 1829, Dale, 7 S. 369.

36. A verbal contract for more than one year is not valid, even for one year, unless parties have entered thereon, in which case it is good for one year. 1749, Caddel, Mor. 12416; 17th June, 1830, Paterson. But see 18th Dec., 1863, Murray, 36 Jur. 187. The class of servants enumerated in the Act 4 Geo. IV. c. 34, *infra*, are held bound for the whole period of a verbal agreement if they enter on their engagement, to the effect of being prosecuted under that Act. 22nd Jan., 1828, Finlayson; 1837, Kennedy, 1 Swin. 474; Dale, *supra*.

37. If it be agreed that the bargain, though for one year, should be reduced to writing, then there is no binding agreement until so recorded.

58. Where the contract is for more than one year, the omission of writing cannot be supplied even by a reference to the oath of the party. 1749, Caddel, Mor. 12416.

39. The writings forming the contract must be probative by being severally holograph of the parties thereto, or duly tested according to law; but these requisites are supplied by *rei interventus*, such as by parties entering into the service; and though the contract itself cannot be proved by witnesses, the acts of homologation may be so proved. 1st July, 1834, M'Lean; 22nd Jan., 1836, Hamilton; 1805, Napier, Hume's Dec. 388; 1781, Rymer, M. 5726; 1807, Neill, Hume's Dec. 20.

40. Documents for the hire of any labourer, artificer, manufacturer, or menial servant, are exempted from all stamp duty by 55 Geo. III. c. 184. But this exemption does not extend to the indentures of apprentices, nor to an agreement of a manager of a factory. 5th Dec., 1845, Ivison, 8 D. 236.

41. An offer on either side may be recalled until accepted. 15th Dec., 1830, Alexander, 6 F. C. 126, 9 S. 190.

42. An agreement made on Sabbath is not invalid. 1820, Reid, 2 Mur. 238; 19th Jan., 1844, Elliot, 16 Jur. 229; Whitnash, 7 B. and C. 596.

43. The final written agreement cannot be interpreted by previous and initiatory writings. 14th Feb., 1332, Florence; 17th Feb., 1853, Edinburgh and Glasgow Bank, 25 Jur. 245. No contrary custom, however strong, can set aside a special bargain; but a uniform and inveterate custom may explain an ambiguous contract.

44. It is incompetent to prove by *witnesses* that a *written* agreement was subsequently altered. 2nd Feb., 1836, Thomson; 18th Feb., 1847, Dumbarton Glass Work Co., 19 Jur. 317.

45. A written agreement may be dissolved by facts and circumstances, but these must be clear and certain. 4th March, 1823, Craig, 3 Mur. 325.

46. If an engagement be admitted, but under a condition, such as on producing certificates of character, or the servant being found suitable on trial, the pursuer must accept the admissions as given, or prove an *unconditional* agreement. It is not the duty of the defender to prove that there was such a condition. 17th Nov., 1827, Forbes, 6 S. 75.

47. There is no fixed rule in law regarding the ultimate duration of a contract of service. One of *eighteen* years was sustained. 1st March, 1805, M'Donell

v. Dixon, App. to M. See 3rd July, 1830, *Silvie*; 1775, *Fairie*, 2 *Hutcheson*, *SCOTLAND*. 161-168.

48. Unless there be a uniform practice requiring arles or earnest-money as *essential* to an agreement of service, the giving and receiving such is not (as is vulgarly believed) at common law *necessary* to the *constitution* of the agreement, though it affords an element in *evidence* of constitution, and sometimes, when returned and received back, of the relinquishment of an engagement. 1703, *Watt*, M. 8462; 1800, *Wallace*, *Hume's Dec.* 383.

49. If arles be large, it is imputed as part of the wages. If small, it is not so applied, but reckoned as *dead earnest*.

50. If a servant enters at a legal term, the contract is held to be for half a year, or a year, according to the custom and nature of the service or occupation. But where the engagement is entered into between terms, it extends only to the next term, if not otherwise bargained. Though the wages be payable by the week, or other period, this of itself does not fix the endurance of the engagement, though an element in the proof. 1779, *Baird*, Sup. to M. 514. Per Lord Mackenzie—"I hold in general, that if a man is hired at so much daily wages, it is an engagement for a day; at so much per month, the engagement is for a month; and if at so much per annum, it would appear to be clear that the engagement was for a year certain. I should say so, where there is nothing in the case to limit that construction." 8th Feb., 1839, *Shedden*, 11 Jur. 309.

51. Menial or domestic servants are, in the absence of express agreement on the point, held to be engaged for six months. *Hume's Decisions*, 393.

52. Farm servants are presumed engaged for one year; also gardeners, overseers, gamekeepers, and managers. The Act 1621, c. 21, declares, "That one who has served during the winter half-year, cannot go at liberty the ensuing summer half-year." This can only apply to servants in agriculture—6th June, 1829, *Finlayson*, 7 S. 717; 12th Nov., 1846, *Armstrong*, 19 Jur. 1; and the same with tutors and governesses. *Moffat*, *infra*; *Todd v. Kellage*, 22 Law J. (Exch.). But it has been thought that overseers, editors, and *ordinary* clerks are engaged during the master's pleasure, unless otherwise stipulated, contrary to the rule in England, which holds them engaged for a year. 2 *Fraser*, 386. Though engaged for a year, wages may be paid half-yearly or oftener, according to the usual and fixed custom of the place and trade. It was proved in an English case, that, according to usage, commercial travellers could be dismissed on three months' notice. *Melzner v. Bolton*, 23 Law J. (Exch.) 130.

53. Where parties do not, on either side, give notice to quit, the contract is held renewed by tacit relocation for the same period, if not exceeding a year; and for a year if for a longer period, and on the same terms in all other respects. 18th Feb., 1833, *Manafield* (House of Lords). Per Lord Moncrieff—"The law is, that the term of hiring is for one year if nothing to the contrary is expressed; and the presumption is, that if the servant continues, he does so upon the same conditions on which he entered. 26th Feb., 1841, *Tait*, 13 Jur. 280.

54. Agricultural and domestic servants require to give and get warning of forty days before the termination of the engagement. The term of notice for mechanics and artisans is ruled by bargain, or the uniform or notorious practice of the particular trade. 27th June, 1823, *Morrison*; 11th March, 1837, *Jack*,

SCOTLAND. 9 Jur. 388; 8th Feb., 1839, Moffat; 20th May, 1839, Milloy, 2 Swin. 381; 6th Dec., 1841, Leadbetter, *ib.* 629; 28th Nov., 1837, Mathew, 1 Swin. 393.

55. If notice has not been given by the master, the servant is entitled to wages or damages, if not continued for another term, the same as if he had been dismissed between terms. 4th Feb., 1813, M'Lean; 13th July, 1818, Anderson, 1 Mur. 429; 27th June, 1823, Morrison; 6th June, 1829, Finlayson, 7 S. D. 717. If a servant does not give notice, he is liable to serve for another term.

56. Warning may be given either in writing, verbally, or by such facts and circumstances as clearly show an intention not to renew the engagement. 1779, Baird (Sup.); 1805, M'Donell, M. App.; 4th Feb., 1813, M'Lean; 1818, Anderson, 1 Mur. 429. But a mercantile agent receiving no other remuneration than a commission upon the transactions negotiated by him, is not entitled to receive from his employers notice of the termination of his employment, like a servant hired for termly wages. 13th Nov., 1851, Ferguson, 23 Jur. 4.

57. Services are always presumed to be for hire, unless excluded by bargain or uniform custom. 22nd Feb., 1831, Sinclair, 9 S. D. B. 487; 21st June, 1831, Lord Mansfield, 9 S. D. B. 780.

58. Where relations do the work of a servant, wages are presumed according to the value of the services rendered, unless a contrary bargain be proved. 1812, Shepherd, Hume, 394; 1813, M'Naughten, *ib.* 396; 16th June, 1820, Chisholm; 23rd Nov., 1833, 19th July, 1834, and 17th Nov., 1835, Smellie, 14 D. 12; 3rd Feb., 1842, Adam; 11th June, 1847, Anderson, 19 Jur. 532. This rule is recognized in England. Bryant, 5 M. and W. 114.

59. Where there exist facts and circumstances to show that service was given and received because of relationship or friendship, and without any intention of giving or receiving wages, but in return for board, no wages are due. 1676, Rig, M. 11426; 1681, Spence, M. 11437; 6th March, 1822, Boyes (House of Lords); 16th Nov., 1849, Ritchie, 21 Jur. 510, and 22 Jur. 3.

60. A servant must enter the service at the stipulated time, and cannot serve by a substitute. 13th Jan., 1830, Campbell, 9 S. 264.

61. If he fails to enter into his service at the stipulated time, he is liable in damages; but he cannot be compelled to *enter* by force of imprisonment. 1799, Clerk, M. 9186; 1st June, 1843, Tulk and Co., 15 Jur. 437.

62. If a workman after entering *deserts*, it has been held that, as a matter of public policy, he may be compelled to return and find caution to continue in his service, under pain of imprisonment on a summary warrant. 9th July, 1825, Gentle; 24th Jan., 1837, Anderson; 21st June, 1832, Stewart; 17th June, 1830, Eddington; 20th Nov., 1832, Bookless; 15th Feb., 1826, Campbell; 26th Feb., 1846, Lees, 18 Jur. 273. The opinion of the whole court was to be taken, in the last case, on the legality of the practice; but the case was compromised. It is said that in England the master has no right at common law to enforce the contract of service, either with servant or apprentice, by imprisonment, and hence the number of special statutes in England. The same is understood to be the common law of France, with the exception of sailors and menial servants. In the case of Anderson, *supra*, Lord Corehouse observed—"It is settled law, that the judge ordinary or justices of the peace, in the exercise of their powers as police magistrates, may grant warrant to apprehend an apprentice or servant

who has deserted his work, and to ordain him to return, or, if necessary, to imprison him until he find caution to return. This, though sometimes a harsh proceeding, is sanctioned by usage; and occasionally it may be requisite, for a workman, by deserting, may do great injury to his master, and such as he has not the means of repairing. But the remedy ought not to go further than the necessity of the case requires, which is only to maintain the possession as it was at the period of desertion, leaving it open to the parties, if they are at issue as to the terms and conditions of their contract, to try the question by the ordinary form of process. If it were not so, they would meet as in a civil question on a very unequal footing; for on this criminal, or at least police proceeding, the workman is either apprehended or ordered to appear personally in court, and the very first step is to take his judicial declaration, while the master is neither required to appear personally, nor to submit to an examination, nor even to state his pleas in detail, before his opponent is interrogated. It is plain, that if this were competent when it is matter of dispute what the nature of the engagement is, the master will have a very great and unfair advantage."

63. The enforcement of contracts of service by summary warrants of imprisonment has not been sanctioned in cases of professional servants either at common law or under the statute. 9th June, 1336, Frame (see opinion of Lord Jeffrey); 25th January, 1845, Normant, 2 Broun, 375.

64. The complaint at common law may be to the sheriff or justices of the county of the workman's residence or where he works. 27th June, 1833, M'Dougall, 11. S. 795. The jurisdiction of the justices is founded on sundry statutes as well as on usage.

65. The caution required can only be to return and continue in his service, not *otherwise to fulfil an engagement*. 21st June, 1832, and 21st May, 1833, Stewart, 11 S. 628; 21st November, 1834, Smith; 24th January, 1837, Anderson; 28th June, 1827, Wright, 5 S. D. 855.

66. The proceedings and proof must be in writing; but no closed record seems necessary. It is not thought, in a case so summary, that there is an appeal from the two justices who act to Quarter Sessions; but an opposite opinion has been expressed in Fraser, vol. ii. p. 396. The proper review is by advocacy or suspension to the Court of Session. It is doubted whether, in such a complaint, the servant can be put under bail *de judicio sisti*, and committed to prison in default thereof. There is no decision to support such a severe step in enforcing a *civil contract*; but there are the authorities of Mr. Tait and Mr. Fraser for the legality of such order and warrant. The form of procedure will be found very fully given in the Appendix to Fraser, 683.

Note.—The following observations appear in Mr. Baird's Treatise on the Law of Master and Servant, p. 172, and are understood to be from the able pen of Sheriff Barclay, or at all events to have his sanction (see also Fraser, vol. ii. p. 396):—

"In the first place, it has been repeatedly held that a summary warrant of imprisonment is incompetent to enforce *any civil contract*—Murray v. Bisset, 15th May, 1810; Smith v. Likely, 12th February, 1812; and that even though involving a *case of fraud*. Morrison, 16th May, 1835; M'Allan, 19th May, 1837. Now unquestionably, the contract of service, in its constitution and its

SCOTLAND. objects, is purely a civil contract. The court, however, have long been inclined to hold that, as a matter of public police, the magistrate may interfere in a more summary way than would be permitted in ordinary civil actions, and even enforce, to a certain extent, return to the service by a summary warrant of imprisonment. But the difficulties attending this form of proceeding are so numerous and so formidable, that it is found, in nine cases out of ten, to be of no avail whatever. It appears sanctioned by precedent, that the apprentice or servant deserting may be apprehended, and brought before a magistrate and examined. Now, suppose that the servant admits both the engagement and the desertion, attempts no justification of his conduct, nor offers to return to his service, but the master (as is frequently the case) refuses to take him back unless he finds caution to fulfil his engagement, it is clear that the magistrate cannot compel such caution, for it would be making a new contract for the parties. The master either gets caution at the outset of his contract, or, if he did not stipulate for it, the fault is his own: and he cannot supply his omission by calling in the aid of the magistrate, not to compel the fulfilment of an existing, but, in point of fact, to make a new contract. This point appears decided in Wright, 28th June, 1827; Stewart, 21st May, 1833; Munro, 7th July, 1837. Suppose the apprentice or servant denies the contract, or the desertion, or alleges dismissal, or admits desertion, but states facts in justification, then the process must go on in the regular form, with a closed record. In such cases, if the servant be engaged for the ordinary period, it will often happen, before the decision can be got, that the term of engagement is expired, and the contract no longer admits of enforcement. The case then resolves into a question of expenses, often very serious in amount, and, if given against the servant, generally irrecoverable. Again, take the case that the apprentice or servant admits the complaint, or that it is found proved against him, before the term of engagement is expired, but he refuses to return to his service; it appears competent, under the authorities of Raeburn v. Reid, 4th June, 1824, and Gentle, 9th July, 1825, to grant warrant to commit him to gaol until he find caution, *not to fulfil the terms of his engagement, but to return to his service*. But what if he cannot find such caution? The decree is not one purely *ad factum præstandum*. It is not similar to those to compel subscription of a deed, or delivery of papers within the defender's power. In such cases the party has not the sympathy either of law or justice, since he holds the key of the gaol in his own hands. To find caution is just as difficult, and often more so, than to pay a debt. The servant may be friendless, or, if he has friends, they behave to belong to his own class of society, and hence will not be received by the clerk of court, who is responsible for their sufficiency. How long is he, then, to remain in gaol? During the period of his natural life? Such, indeed, is the effect of the warrant; but some say, only until the expiry of the term of his engagement. On what principle can such a construction be admitted? There is no limitation in the warrant. Can the gaoler review and limit the warrant? The magistrate is *functus officio*, and therefore cannot touch it. Eddington and Sons v. Astley, 4th December, 1829. Then, again, what relief has the master got? He has not got his service. No doubt he may have got the servant punished, but at same time got punished himself, by being obliged to pay a

heavy sum in name of law expenses and aliment. But how can punishment be SCOTLAND. thus obtained under a *civil* form of action, or how can punishment compensate for a *civil* obligation, any more than imprisonment can cancel a debt? Suppose imprisonment undergone, and the person liberated at the issue of the term of engagement, can the master sue for damages for breach of contract? and can the servant plead that his engagement was fulfilled by reason of the endurance of the penalty of violation? But suppose that the apprentice or the servant finds caution, to the satisfaction of the most fastidious official, to return to his service, what may be implement of this judicial engagement? He returns to his work, lays down a plank of wood upon his bench, and he lifts up his hat and walks away. This may not be a *bona fide* return; but then, where is the line which separates the province of good and bad faith? Will an hour, a day, a week, or a month, satisfy the bond, and resolve into a new desertion? and how often is the farce to be repeated, of desertion—caution—return—and desertion? But the anomalies of this procedure are not yet done. If public police demands extraordinary powers to enforce such contract, on what principle of law or justice is the enforcement all on one side? If the servant, deserting without cause, is to be sent to gaol until he finds caution to return to his service; then, if the master dismisses without cause, why is he not sent to gaol until he finds caution to fulfil his part of the engagement, by taking the servant back? It is a common law rule, that all contracts are either binding on both parties or on neither; and though the omnipotence of statute may step in to vary that rule, yet equal-handed justice gives equal remedy to all parties equally bound. But if the contract of service be, of all the contracts in the circle, permitted to have specific enforcement, from which no amount of reparation or damage can purchase exemption, see into what consequences we are led. The boots of an inn excites the fancy of some octogenarian frequenter of his master's bar, who capriciously bequeaths him his immense fortune. The unexpected death of many intervening aspirants raises a labouring mechanic to a peerage; a lucky ticket in a lottery brings a collier from under ground, and enables him to acquire the estate in which the mine is situated. In all these cases, is the master entitled to keep the ennobled servant at the grindstone until the expiry of the engagement? or to have him turned into gaol, unless he purchase his freedom at what price the master may choose to dictate? It is clear that if the rule exists at common law, it must be general; and the magistrate cannot judge of one exception, unless he judges of all, and places himself above the law. These, doubtless, are extreme cases, but principles are best tried by that test. With deference, therefore, the contract of service appears to be one which, from its nature, cannot be *specifically* enforced at *common law*, but resolves into a claim of damages for breach of contract, equally with the contract of marriage, or of sale, or any other contract which is incapable of specific implement."

67. A warrant to imprison need not be extracted—11th March, 1837, Jack, 15 S. 833; but it must contain the name of the party committed. 20th Dec., 1837, Dunn, 1 Swin. 629. The servant is entitled to aliment from his incarcerator, under the Act of Grace, while detained in prison, being committed for performance of a civil claim. Fraser, 396.

68. At *common law*, enlistment does not put an end to a contract of ser-

SCOTLAND. vice. 1799, Clerk, M. 9186. But this is provided for in the Annual Mutiny Act.

69. If a servant be disabled in his master's service whilst doing his work, he is entitled to his full wages, and if residing in family, to board wages. He is not entitled to leave, but bound to remain and give what limited service he can to his master. Therefore, where a domestic servant was taken ill and went to see a doctor contrary to her master's orders, who offered to procure medical advice, her dismissal for disobedience was found justified. 20th Dec., 1853, A. v. B., 26 Jur. 129.

70. In cases of ordinary sickness of domestic servants, no deduction from the wages is allowed for any not unusual period of disability. *Eleven weeks* is the longest period which has yet been sanctioned. 29th Nov., 1794, White (not reported).

71. Sickness existing at the time of entry will entitle the master to refuse to receive the sick servant; and sickness brought on by the servant's misconduct during the period of engagement gives him no claim to wages, but may, on the contrary, in aggravated cases, warrant a dismissal and a claim of damages. 2 Fraser, 400.

72. Imprisonment of the servant for debt or crime puts an end to the contract, but not where he is ultimately acquitted of the criminal charge. 1828, Wight, 4 Mur. 590.

73. The servant must know the work for which he hired himself, and do it skilfully. 1771, Burnet, M. 8491. He is liable in damages and dismissal for gross negligence or default.

74. A servant is not bound to give a higher scale or other kind of service than he promised or engaged to give. 1801, Gunn, Hume's Decisions, 384. "The court did not consider the pursuer as a well-qualified cook or housekeeper; but they thought that at hiring she had freely disclosed the imperfect state of her qualifications in these respects, and that, having engaged her when in the knowledge of her defects, her master and mistress must put up with them as they best might for the term."

75. The servant is not entitled to make a very scrupulous limitation of his work, but neither can he be desired to make a great deviation from the kind agreed on, except in cases of emergency. An overseer of a coal-work was held not bound to assist at the windlass. 1775, Fairie, 2 Hutch. 168. Nor a gardener to work in a turnip field. 1807, Thomson, Hume, 392. Nor a manager of a farm to work as a servant. 1806, Stewart, Hume, 390. Nor a cook to act as market-woman. 1801, Gunn, Hume, 384. Nor a saddler to work as a common servant. 1818, Peter, 2 Mur. 28. But a farm-servant hired for out-door labour was found not entitled to refuse to attend to the cattle in his turn on Sabbath. 11th July, 1844, Wilson, 16 Jur. 549.

76. A servant is not liable in damages occasioned by him to his master's property *accidentally*, and not from carelessness or negligence on his part. 26th Feb., 1841, Tait, 13 Jur. 280.

77. Disobedience to lawful and reasonable orders, neglect of duty, immorality, or disrespectful language, will warrant dismissal; but for a first or trivial offence admonition is always recommended. Where offences are pardoned, they cannot

afterwards be made the ground of dismissal, but may be taken into view as SCOTLAND. aggravating a subsequent offence as the immediate ground of dismissal, which otherwise, standing by itself, might not have been sufficient. 1802, Elder, Hume, 386; 1807, Thomson, Hume, 392; 9th Dec., 1824, Hamilton; 3rd July, 1830, Silvie. Per Lord J.-Clerk Hope:—"A servant is bound to perform any order given him by his master, which is reasonable and proper. If the court think that the order was so, then the master is the best judge whether, in the circumstances, he should dismiss or not." 11th July, 1844, Wilson, 16 Jur. 549.

78. Immorality, disobedience, dishonesty, and other gross improprieties, are grounds of dismissal; but these acts must be done *in the service*, or to the master's prejudice. 21st July, 1835, Gunn, 13 S. 1142; 23rd June, 1864, Greig, 36 Jur. 641. Such improprieties, *previous* to entering into the service, are not grounds of dismissal if not continued.

79. The servant may be dismissed, even for a *first* offence, *if gross*, and for more trivial offences if persevered in after admonition. In such cases the servant is not only liable to dismissal, but also to forfeiture of wages. 4th June, 1832, Matheson (Jury Court); 11th July, 1844, Wilson; 1802, Elder, Hume 386. But in less flagrant cases there may be grounds of dismissal without forfeiture of wages earned, which, towards the close of a term, might be an unnecessarily severe penalty, and encourage unprincipled masters at that period designedly to put an end to the engagement. This is more especially the rule where, as is often the fact, there has been blame on both sides. 1798, Taylor, Hume, 382; 13th Feb., 1828, Learmonth; 21st July, 1835, Gunn (jury case); 1807, Thomson, Hume, 392. "The Lords did not by any means approve the servant's conduct; but they did not think it so highly blameable as to infer the forfeiture of his place and wages. In this, as in some other instances, the master seems to have been somewhat hasty in turning off the servant for a first fault. If the master had seriously admonished him, and set down his duty, and he had again fallen into the like faults, the issue might probably have been different."

80. A servant's acquiescence in his dismissal is not to be presumed. 5th March, 1825, Cooper; 4th March, 1831, Batchellor, 9 S. 849.

81. The master, in gross cases of misconduct, may obtain damages for breach of contract. 1815, Ferguson, Hume, 21.

82. The hours of labour are fixed by agreement or by practice of trade; but farm-servants are regulated by the emergencies of seasons. 11th July, 1844, Wilson, 16 Jur. 549.

83. A servant is not bound to work on Sabbaths—Acts 1597, c. 70; 1690, c. 21, s. 8; 20th Feb., 1837, Phillips (in House of Lords), 2 S. and M'L. 465; except in proper works of necessity, such as relate to domestic and farm servants. Wilson, *supra*. He is not bound to work nor entitled to wages on days set apart for fasts.

84. The right to have certain holidays or to attend feeing markets, where already not engaged, failing special bargain, depends on the uniform and recognized practice of the district, not unnecessarily to be limited, nor yet extended.

85. A servant, after notice on either side to quit, is entitled to ask for reasonable time, at a convenient season, to look for another situation, or to attend such

SCOTLAND. feeing markets as may be sanctioned by the uniform custom of the district until he gets a new master, and such reasonable absence will not justify a dismissal; and if, by leave being refused, a situation is not obtained for another term, the master unnecessarily refusing will be liable in wages as damages.

86. A servant who is justifiably dismissed may be expelled the house, if he refuse to leave, as a trespasser therein; but this must be done without unnecessary violence.

87. Where parties agree that either party may put an end to the contract on payment of wages, this does not include board wages. 5th March, 1825, Cooper, 3 S. D. B. 190.

88. The servant must not reveal domestic secrets; and in certain manufactories, if a servant reveals secrets, he may at once be dismissed, and be made liable in damages. 19th March, 1836, Rutherford (jury case).

89. The time, labour, and talent of a servant, and consequent earnings, are his master's; so he cannot work to another, or do anything for his own interests against those of his master.

90. Where a servant is hired for a certain farm, manufactory, or place, he is not obliged to serve at another. 24th Jan., 1837, Anderson, 15 D. 412.

91. A domestic servant is bound to go with his master from one place to another, but not to a foreign country. If he voluntarily goes without bargain, or where there exists no custom, he is not entitled to the expense of returning. 1779, Baird (Hailes, p. 839).

92. Absence for a short time without any indication of an intention not to return is not held *desertion*, so as to warrant refusal to receive back. 1686, Malvenius, M. 583; 1798, Taylor, Hume, 382; 1807, Thomson, Hume, 392; 13th March, 1822, Reid (House of Lords); 13th Feb., 1828, Learmonth. Absence for five days was held sufficient to justify dismissal. 13th March, 1822, Crawford (as reversed in House of Lords). Where a servant had gone to church contrary to her master's orders, under particular circumstances, dismissal was sustained. 9th Dec., 1824, Hamilton, 3 S. D. 379; 20th Dec., 1853, A. v. B., 26 Jur. 129.

93. A master is not entitled to retain the servant without finding fault, and refuse wages because of conduct known to him, and which might have justified dismissal at the time. 10th Feb., 1831, Fraser; 26th Feb., 1841, Tait, 13 Jur. 280.

94. The master is bound to treat the servant with propriety, and cannot exact unnecessary and unreasonable labour, or obedience to unreasonable and unusual orders, give harsh treatment, or use opprobrious language. 1764, Smart, Hume, 18. A female servant may leave in the event of the master's indecent conduct towards her. 14th May, 1832, M'Lean (Jury Court). The same result will follow from a false charge of dishonesty or immorality against the servant. 16th March, 1833, Langmuir. In either case the master is liable in wages; and in gross cases he will be subjected in damages besides.

95. Personal chastisement is not permitted by a master to a servant, except with very young persons, and then it must be with moderation, such as a parent would exercise upon his own child. 1794, Smart (Hume's Dec. 18); 24th Nov., 1836, Keith, 9 Jur. 73.

96. The master must provide suitable food and lodging to domestic servants, SCOTLAND. and he cannot insist on a female servant living out of the house on board wages. 12th Feb., 1822, Graham, 1 S. 349; 23rd Nov., 1848, Wilkie. In the last noted case, the question was as to the supply of potatoes stipulated for, but the crop of which had failed, and meal was substituted. Per Lord Jeffrey—"The contract must be held as qualified by this, that it is an understanding, at all events, to supply sufficient aliment. It may be that the price of provisions may rise, but that is no matter; aliment in one shape or other must be supplied, at whatever cost."

97. The master is not bound to provide medical attendance and medicine to a servant, even though for an injury sustained in the service; but if he calls in a surgeon, he cannot charge the servant with the expense. 1755, Mitchell, M. 11605; 20th December, 1853, A. v. B., 26 Jur. 129.

98. The servant was held entitled to reparation from the master for an injury received in the improper conduct of his business—13th February, 1839, Sward; December, 1852, Gray; and is liable for accidents by defect of machinery whilst the servant is in the work. 3rd July, 1855, Clark and Others; 29th January, 1858, Rankin. But not for latent faults. 21st May, 1864, Ovington, 36 Jur. 553. Brothers of a servant killed in his master's service cannot sue for damages as *solutum*. 12th June, 1855, Greenhorn. But a workman in a perilous work is bound to undertake the ordinary hazard thereof. 28th November, 1857, Cook, 30 Jur. 75. Employer is liable in damages to a servant injured by insufficiency of machinery—2nd December, 1857, Duncan, 30 Jur. 99; 12th February, 1858, Henderson and Son, 30 Jur. 297; but not where the servant has been careless. 21st January, 1858, Wilson; 29th June, 1861, Weems, 33 Jur. 621. And unless the master has contributed to the result by personal *culpa*, he is not held liable for injury sustained by one servant through fault of another, not a manager or representing the master. 17th June, 1858, Bartonshill Coal Co., 30 Jur. 577 (H. of L.).

99. The servant may leave, if not paid his wages at the time stipulated; and interest is due on wages from the time when the amount is due or ascertained. 18th February, 1833, Lord Mansfield (H. of L.); 13th June, 1821, Wallace (Ib.).

100. Gifts made during service cannot be deducted from wages, unless it appears they were understood as given in part payment; but where there is only an implied contract, they may be reckoned in estimating the amount of wages to be allowed. Fraser, 429.

101. Mournings given to servants on death of the master, or a member of the family, cannot be charged against the servant, unless so agreed on. 1713, Moncrieff, M. 3945.

102. A suit of livery is not held part of wages, and remains the property of the master unless otherwise agreed on. Crocker, 3 C. and P. 470. Per Lord Justice-Clerk—"There is no principle for applying a different rule to the case of plain clothes and of livery clothes. When a master agrees to furnish his servant with clothes, they remain the master's property unless there be a special bargain to the contrary." 2nd July, 1825, Shiells. See 1801, Robertson (Hume's Dec. 208).

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103. Wages cannot be recovered by a *summary* action before the sheriff. 17th December, 1830, Ritchie, 9 S. D. B. 223. When before the justices, and beyond the limits of their Small Debt Act, the proceedings must be conducted in writing. An appeal to the Quarter Sessions and Supreme Court is competent.

104. A workman has a lien for his wages on an article of his master's in his possession, for work and expense disbursed thereon, but not extended to implements for producing the article. 13th July, 1844, Somerville. He has no such lien if the article continues in the master's premises. See 1752, Lesly, M. 2660; 1791, Harper, M. 2666; 1799, Burns, Hume, 29; 17th June, 1825, Calum (H. of L.); 12th June, 1833, Patton, 11 S. D. B. 703.

105. Both at common law and by the Act 1 Vict. c. 41, s. 7 (Sheriff Small Debt Act), servants' wages are not arrestable so far as necessary for their subsistence; and wages are not arrestable on the dependence of small-debt actions. Wages, at whatever times payable, fall under the triennial prescription. 20th December, 1842, Ritchie; and every year or term runs a separate course. 17th November, 1835, Smellie, 14 D. 12, and 8 Jur. 14; 10th January, 1838, M'Beath, 10 Jur. 277.

106. Where a master dies, and the three years had not elapsed before the death, it was formerly held that there was no presumption of payment, though three years had run before the action was brought. If the heir admitted the constitution of claim, but could not swear to payment being made, the claim was held established. 15th January, 1830, Ritchie. But this distinction in the law of prescription generally was abolished by the unanimous decision of the whole court. 12th July, 1843, Cullen, 25 Jur. 519.

107. Where a servant dies between terms, wages are due to his executors for the period he served. Where a master dies before the term, wages and board wages (when part of the contract) are given to the term; and should the death be within the period for giving notice, the claim may be extended for another six months—17th November, 1790, Puncheon v. Haig's Trustees; but an agricultural servant is not free by the death of his master. 6th June, 1829. Finlayson. The executors of a master are entitled to the services of a servant to the same extent as the deceased master would have been. Ersk. b. iii. t. 3, s. 16. The servant is also bound with due diligence to look out for another situation, which, if he gets or can get, the obligation to continue wages then ceases.

108. Farm and domestic servants are preferable creditors, in the event of their master's death or bankruptcy; for the current term's wages, and may be paid immediately when wages become due; but they have no preference for arrears. 1675, Hall, M. 11829. The trustee may demand the services of the servant in return for the wages paid from the bankrupt estate. If the estate takes the benefit of the services of servants, who otherwise have no preference, the trustee becomes liable for wages in return for these services. The privilege extends to reapers and other farm-servants hired by the week or day. 1779, Melvil, M. 11853; 1804, Lockhart, App. to M.; 21st January, 1832, M'Lean. But the like privilege was not extended to any other class of servants, and was denied to artisans and mechanics, to an overseer of a distillery, to a brewer and maltman, and to a clerk. But by the Bankruptcy Act (1856), clerks, shopmen,

and servants, whose wages do not exceed £60 per annum, are entitled to a pre-Scotland. ference of a month's wages.

109. Farm-servants are preferable to the landlord over the crop raised by their labour, and live stock reared and protected by their care. 29th June, 1819, M'Glashan. It has not been decided that domestic servants have this preference, and the general opinion and practice are adverse to their claim.

110. A master cannot be compelled to give a character to his servant. 12th December, 1809, Fell, 15 F. C. 446. If a character be given on being asked, it is privileged; and if true, is justifiable, however prejudicial it may be. 6th July, 1818, Christian, 1 Mur. 427; 13th July, 1818, Anderson, 1 Mur. 429; 4th June, 1832, Matheson, 10 S. D. B. 825.

111. A master may be liable in damages to another who hires a servant on a false character given the servant. So decided in England. Foster, 6 Bing. 396.

112. The statute 32 Geo. III. c. 56 imposes a penalty of £20, 1st, If a person shall pretend to be the master, and give, personally or in writing, a false character to the servant; 2nd, If a master gives a false written character of a servant; and 3rd, If a servant makes a false statement of service, or produces a false or vitiated certificate. The penalty is recoverable before two justices. Mr. Tait doubts if the Act applies to Scotland; but there being no limiting words in the statute, it is probable it would be held a British Act, as with the 4 Geo. IV. c. 34, also in like manner doubted by the same learned author whether it extended to Scotland.

113. Where there exists a *delectus personæ*, the master cannot assign the servant to another, but he may assume a partner in case of artisans. 13th Feb., 1827, Campbell; 11th July, 1837, Pagan; 11th March, 1841, Harkins. One company cannot assign a servant to another company. 1789, Edinburgh Glass-house Company, Mor. 597.

114. Where a party entices an engaged servant from his service, or induces him to reveal his master's important secrets, he is liable in damages. 19th June, 1800, Robertson, Hume, 20; 1st Nov., 1816, Dickson, 1 Mur. 141; 18th July, 1822, Kerr, 3 Mur. 126; 31st May, 1825, M'Gregor; 19th March, 1836, Rutherford; 13th Feb., 1841, Roxburgh, 13 Jur. 249.

115. Where a master fails in his part of the contract, and dismisses without justifiable cause, or a servant is justified in leaving the master because of misconduct on his part, the master is liable in wages and board wages (where these last are part of the contract), and, in addition, damages may be awarded; but where the servant obtains another situation, the amount of wages got forms an element in computing the damages. 1790, Puncheon, M. 13990; 1801, Gunn, Hume, 384; 1806, Stewart, Hume, 390; 4th Feb., 1813, M'Lean; 13th July, 1818, Anderson, 1 Mur. 429; 27th June, 1823, Morrison; 5th March, 1825, Cooper; 6th June, 1829, Finlayson; 16th March, 1833, Langmuir, 11 S. D. B. 571.

116. Where a servant has once been improperly dismissed, he is not bound to return to his service, though immediately requested to return, though this may limit his claim for wages or damages.

117. A master is liable for contracts made by his servant, where he specially authorizes him so to contract, or where the office of the servant implies such

SCOTLAND. authority, or where authority is implied from facts and circumstances. He is not liable for purchases made by a servant on credit, where it is the master's practice to deal in cash, unless where he gets the benefit of the furnishings without having given corresponding money to the servant. A servant binds his master, and not himself, within the limits of his authority, and binds himself, and not his master, for all beyond these limits. 1793, *Oliver* (Hume's Dec. 319); 1793, *Inches*, ib. 322; 1804, *Dewar*, ib. 340.

118. A master is liable for damage occasioned by his servant in doing his master's service, by carelessness, negligence, or want of skill, but without criminal intent, and the master may be sued without calling the servant. 18th Dec., 1829, *Dougall*. A master was held liable for the burning of a wood by his servant's setting fire to some neighbouring heath. 10th June, 1812, *Keith*. The owners of a stage-coach were held liable in damages for the death of a passenger occasioned by the driver's misconduct. 26th Feb., 1813, *Brown*; 22nd Jan., 1822, *Fraser*; 7th June, 1822, *Anderson*. So was a master held liable for his servant, who, in the management of a horse and cart, had injured a child. 4th July, 1826, *Baird*; 10th Dec., 1827, *M'Laren*, 4 Mur. 384; 1st July, 1851, *Paterson*; 31st Jan., 1852, *Rankine*; 1st Dec., 1852, *Gray*; 27th Jan., 1855, *Little*; 15th Jan., 1857, *M'Naughton* (especially *Lord Ardmillan's Note*), 29 Jur. 132.

119. A master is *not* liable for the servant, where the act was prohibited, or beyond the sphere of his duty; such as where servants, in the master's absence, and without his authority, cut trees, and in doing so inflicted injury. 14th May, 1817, *Linwood*; 1st March, 1822, *Waldie* (both affirmed on appeal). See 23rd June, 1826, *Howey & Co.*; 10th Dec., 1827, *M'Laren*, 4 Mur. 384; 24th Dec., 1827, *Miller*, ib. 388.

120. A master is *not* liable where his servant does the wrong wilfully and wantonly—1804, *Dalrymple*, Hume, 387; 21st June, 1832, *Young*; nor where the injury is occasioned by his property whilst in the hands of a person not his servant. 24th June, 1841, *Greig*. A captain of a merchant ship is not liable for the wrongful act of his mate—6th Feb., 1841, *Petrie*; neither is a superintendent of police liable for one of his officers. 1st Feb., 1838, *Mitchell*, 10 Jur. 244.

121. Where a servant commits a criminal offence with the master's authority, both are liable to punishment; but if the servant does the act without such authority, he alone is liable, and the master is free. 10th Dec., 1827, *M'Laren*, 4 Mur. 384; 13th June, 1842, *Henderson*, 1 Broun, 360. Per Justice Patteson—"A master is liable where his servant causes injury by doing a lawful act negligently, but not where he wilfully does an illegal one." *Lyons*, 8 A. and E. 512.

122. Private joint-stock companies are liable for their servants—16th March, 1836, *Edinburgh and Glasgow Canal Co.*; but public trusts are not so liable. 23rd Aug., 1839, *Findlater* (as reversed in House of Lords), 12 Jur. 135.

123. Such masters as are within the edict *Nautæ Caupones Stabularii* are liable for the honesty of their servants. 26th May, 1841, *Christie*, 13 Jur. 391.

124. Parties may put an end to their contract at any time, either by express or implied consent. 1815, *Ferguson*, Hume's Dec. 21; 1800, *Robertson*, ib. 20.

125. Parties may agree to separate at any time without warning, in which

case no cause need be assigned for terminating the contract. 12th July, 1829, *SCOTLAND*. Pollock (House of Lords); 26th Jan., 1836, Mitchell; 1671, Stewart, 1 Brown's Sup. 645.

126. A master, without assigning cause, may dismiss at any time, on paying full wages and board wages where stipulated. 12th Feb., 1822, Graham, 1 S. 349. "Several of the judges observed that a master has a right to dismiss a servant without assigning any cause, on payment of wages and board wages, or he may oblige him to reside out of his house on paying board wages."

127. Where a servant has a house or other possession as part of his remuneration, he must cede possession on termination of the service, or on dismissal; but he will have value for crop or vegetables sown or planted by him. 16th Dec., 1808, Young, Hume, 582; but he cannot be ejected *brevis manu*. 13th March, 1819, Scougall, 2 Mur. 110.

128. An apprentice or servant may lawfully contract not to set up business in the same line, or within certain limits, after leaving his service. 1735, Stalker (Elchies); 29th Nov., 1831, Curtis (Deas and Anderson); 14th July, 1863, Watson, 35 Jur. 633.

129. An action of damages sustained by an apprentice against his former master for failure to instruct. 12th Nov., 1863, Lyle, 36 Jur. 42.

130. Dismissal of a foreman justified on the ground of improper conduct to female workers under his charge. 23rd June, 1864, Greig v. Sanderson, 36 Jur. 641.

131. Proof of value of services must be of those actually rendered. 23rd June, 1864, Addie v. Pinkerton, 36 Jur. 635.

132. A master is not liable for damages arising from latent faults in machinery, which he is not bound to guarantee. 12th May, 1864, Crighton, 36 Jur. 553.

133. The practice of the trade regulates the notice to be given. 5th June, 1856, Outram & Co., 27 Jur. 414.

134. Molesting or intimidating a servant is punishable under the Act 6 Geo. IV. c. 129.

135. Opinion by the court that an information against brewers, for retailing beer without a license and certificate to do so, by means of their servants, was rightly dismissed, because the sale by the servants was without knowledge of the masters, and not within the scope of the servants' duty, and, therefore, that the masters were not liable thereto. *The Queen v. Gilroys*, 6th March, 1866; Scot. Law Rep., vol. i. p. 202.

136. In an action of damages against the lessee of a colliery, for injury caused by the breaking of a rope used at a coal pit; it was proved that the rope which broke had been substituted by the underground oversman, without the knowledge of the lessee of the colliery, for a rope supplied by the lessee. The jury returned a verdict for the defenders. Circumstances in which the court set aside the verdict and granted a new trial, on the ground that the case had not been satisfactorily tried, because it did not appear from the evidence, whether, in substituting the rope, the oversman was acting within the scope of the duties delegated to him by the master. The court held that there was evidence, though not strong evidence to go to the jury of the personal fault of the master, but that

SCOTLAND. it did not appear whether the jury, in returning a verdict for the pursuers, had proceeded on the ground that the defender was personally to blame, or on the ground that he was responsible for the fault of the oversman. *Russell, or Wilson, and another v. Sneddon*, 25th May, 1866; *Scot. Law Rep.*, vol. ii. p. 33.

137. In an action of damages against coal masters, for the loss of life of a collier, alleged to have been caused by the fault of a pit manager in not providing sufficient means of ventilation. Held (1) that the manager and collier were fellow servants; (2) that the provision for ventilation being one of the ordinary operations of the pit, and there being no allegation of the manager's want of skill, the masters were not liable for his fault; (3) exceptions to a direction to the jury, that if they were satisfied that the defenders had delegated their whole authority in the matter of ventilation to the manager, he and the deceased were not fellow workmen, and the defenders were not on that ground relieved from liability, sustained, and new trial granted. *Wilson v. Merry & Cunningham*, 9th November, 1866; *Scot. Law Rep.*, vol. iii. p. 9: and 2nd January, 1867; *Ib.* vol. iii. p. 154. *Affd.* on appeal to H. of L. *Vide Appendix.*

138. Held that an indenture, which bore to be entered into by an apprentice, with the advice and consent of his brother, was binding on the apprentice, although the brother had not signed it, 8th March, 1866; *Scot. Law Rep.*, vol. i. p. 207.

139. An apprentice having deserted his service, his masters presented a petition to the sheriff praying for an order on him to return, and for a warrant to imprison him until he should find caution to remain in his service till the expiry of his indenture, and the sheriff ordered the petition to be served on the apprentice, and appointed him to enter appearance, under certification that if he failed the prayer of the petition would be granted. Held, that as this was a civil proceeding the sheriff was entitled to proceed in absence and without proof to grant the prayer of the petition. *Cameron v. Murray and Hepburn*, 8th March, 1866; *Scot. Law Rep.*, vol. i. p. 207.

140. Master held liable for injury done by escape of fire-damp in a coal pit. *Connor v. Kidston*, 8th March, 1866; *Scot. Law Rep.*, vol. i. p. 210.

141. Master of an iron work held not liable for a spark having fallen into pursuer's eye. *Holt v. Martin*, 20th March, 1866; *Scot. Law Rep.*, vol. i. p. 232.

142. An action by a salaried manager of a railway company for remuneration of extra services alleged to have been rendered by him during a period of eighteen years, dismissed as irrelevant, there being no specific averment of an agreement that these services should be remunerated. *Latham v. Edinburgh and Glasgow Railway Company*, 18th July, 1866; *Scot. Law Rep.*, vol. ii. p. 208.

143. Circumstances in which held that mill owners were liable in damages, in respect of injuries sustained by one of their workers, in consequence of machinery being unfenced. *Allan v. Wilson & Son*, 5th December, 1866; *Scot. Law Rep.*, vol. iii. p. 93.

144. Circumstances in which a servant found liable for £100 damages to his employers for breach of contract of service. *Cameron & Co. v. Gibb*, 2nd March, 1867; *Scot. Law Rep.*, vol. iii. p. 282.

145. In an action of damages by a young girl for personal injury caused by

unfenced machinery, £30 awarded. *Walker v. Martin*, 30th March, 1867; Scot. SCOTLAND. Law Rep., vol. iii. p. 356.

The following cases occurred in Ireland:—

1. Prisoner was convicted on an indictment for embezzling money and IRISH securities for money belonging to R. C. The evidence was that R. C. sent the prisoner, his servant, to a fair with cattle, but gave him no authority to sell them. The prisoner sold them as the property of R. C., and disappeared with the money. Held that the conviction was bad. *The Queen v. Horrigan, Jebb & Bourke's Rep.*

2. A. received into his possession a certain sum of money and embezzled the same. Held that the prisoner, having passed an account, and a balance being struck in September and December following, and not having given credit for the intermediate receipts, but having absconded, that was sufficient evidence to go to the jury of an intention to embezzle. *The Queen v. Murphy*, 1 Ir. Com. Law Rep. 91.

PART V.

THE PRACTICAL WORKING OF COURTS OF CONCILIATION AND ARBITRATION, AND THE BEST MODE OF ESTABLISHING AND CONDUCTING THEM.

CHAPTER I.

CONCERNING EXTRA-JUDICIAL COURTS, OR BOARDS OF CONCILIATION.

I. EXTRA-JUDICIAL COURTS, OR BOARDS OF CONCILIATION.

FOR a country so essentially ruled, as ours is, by laws framed by representatives of the people, it is amazing how long it takes before obvious truths become generally manifest; and even when they do, it is equally matter of surprise to observe how much wrangling and fighting requires to be gone through before they can be turned to practical account. Years of systematic agitation by means of the platform and the press, by the aid, perhaps, of the banqueting hall and ball-room, by speeches and toasts, by "Hip! hip! hurra! and one cheer more," and the British public become slowly alive to the fact that something involving a principle very like the one which proves that two and two make four, has been stoutly fought, and—all but won. This, however, may be said to be the natural result of the constitution of a people who behold with astonishment and awe the gradual formation and extension of a gigantic league to promote the great discovery that corn will be more abundant and cheap in proportion as its importation is rendered easy and free, and who view with wonder the establishment of a peripatetic association of grave and learned men, who, like the Greek philosophers of old, go round from city to city teaching the doctrine that uniformity of laws in three kingdoms, which call themselves united, would be a highly desirable and convenient thing. The public delight to witness the

monster shows held under the auspices of these associations, now in one locality and now in another, to exhibit the newest phase of the occult truths to be evolved by the adoption of the decimal system, or by improved dwellings for the working classes, just as it delights to patronise Mr. Wombwell and his caravans, with the newest things in sea serpents and gorillas. The public walk in, and, in the language of the showman, having paid their money, they have their choice. But while one set of agitators arm and equip for the special purpose of promulgating these great and marvellous truths, another set array themselves to resist them to the death. The nation, inert and sluggish as some huge and unwieldy animal, is buffed and kicked on one side by way of rousing it into consciousness of the vast importance of the new discoveries in social, legal, or political science, while it is as vigorously kicked and buffed on the other, upon a principle of counter irritation, intended to destroy the effect sought to be produced by the opposing faction. This process goes on perhaps for years before the aforesaid animal becomes sensible of any inconvenience in its normal condition, or is in the slightest degree moved by the recalcitrant operations upon its mighty flanks, until what could not be accomplished by the gravity of the situation, backed by incessant thumping upon the hide, is perhaps suddenly and unexpectedly brought about by the tickling of a nostril, or a whirring in the ear, by an audacious fly. Behemoth gives a few preliminary snorts, indicative that he is dimly conscious of something to his advantage. The "party of progress," as it delights to be called, take advantage of the long expected change; while their opponents, by an involuntary whisk of the animal's tail, are temporarily swept aside, and—the nation having slightly altered its position, dozes off into a profounder sleep.

Sometimes, however, but rarely, this state of matters is reversed, and it is the nation that rouses its representatives. This has been the case to a limited extent in the matter of courts or boards of conciliation for settling differences between masters and workmen. While our legislators were talking about it, either afraid to trust the people with the organization and management of courts of their own, or considering the propriety of appointing a commissioner to examine into the working of the system in France, the manufacturers and workmen of Nottingham had the wit to see that it was not necessary to go to France to inquire

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I. EXTRA-
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Board of
conciliation
established
at Nottingham.

into the working of a principle which recommended itself by its simplicity to the common sense of mankind. They, therefore, about some seven or eight years ago, formed a court or board of conciliation for themselves, instead of waiting indefinitely for the slow progress of doubtful legislation.

The court in question was established in connection with the hosiery trade, which has for upwards of two hundred years been centred in the counties of Nottingham, Leicester, and Derby. Leicester has long been the head-quarters of the woollen branch, as Nottingham is of the cotton, silk, and merino branches, which form by far the largest portion of the trade. There are few trades in the United Kingdom in which there formerly existed so much agitation and irritation as in this industry. For a century past strikes have been frequent and protracted, and in some instances they led to disastrous and even fatal consequences. *Luddism* was an outgrowth of the opposition to improved machinery, which the framework knitters believed tended to reduce wages, and was not suppressed until many of its unhappy leaders suffered the punishment of death. The term *Luddism* was derived from the name of a young man called Ludlam, belonging to Somersetshire. He is said, on having been ordered to "square the needles" by his father, who was a frame knitter, to have taken his hammer and beaten them into a heap. Parties of men under desperate leaders committed such outrages during the years from 1811 to 1817 that a military force had to be sent into the locality, and frequently scenes took place similar to those witnessed in and around Glasgow during the period of the cotton spinners' conspiracy in 1837.

Origin of
Luddism.

Hosiery
manufac-
ture.

The hosiery manufacture is the trade to which Leicester chiefly owes its prosperity, and the increase of its population during the present century from about 16,000 to upwards of 60,000 persons. It may now be considered to be the principal seat of this branch of industry, especially of worsted hose and fancy articles, there being more stocking-frames in Leicestershire than in any other county. The number of frames in Leicestershire in 1812 was estimated at 9083; in 1832, at 11,200; and in 1844, at 20,861. In the latter year there were 16,382 frames in Nottinghamshire, 6797 in Derbyshire, 930 at Tewksbury, 2605 in Scotland, 265 in Ireland, and the remainder were in small numbers in various parts of England.

In the report of the commissioners appointed to inquire into the condition of the framework knitters (1845), there is an

elaborate and complete analysis of the condition of this class of our manufacturing population; and certainly if strikes could be justified as a means of permanently raising wages, they would be so in the case of the framework knitters and kindred branches of the hosiery trade. The report states that:—

"Mr. Felkin calculates the total amount paid in wages in the year at £1,049,130; which, divided among the 42,652 employed frames, would give an annual rate of earnings (estimated at 50 weeks) for each frame of £24 12s., or 9s. 10d. per week. This computation, however, includes the frame and shop charges, which would be on the average 40 per cent., or two-fifths of the earnings; as he confirms in his detailed account of 154 separate cases miscellaneously selected from the counties of Nottingham, Derby, and Leicester, whose united earnings for a week amounted to £75 12s. 3d., and the charges to £30 1s. 5d., leaving (net) £45 10s. 10d., or 5s. 10½d. per frame."

The system of frame rents and "charges" is one of the most oppressive that can possibly be conceived. It grinds the poor stocking weaver almost down to dust; at least there is little of his weekly earnings left, according to the most trustworthy authorities (Plea for Parliament, by Thomas Winter), when the rents and charges are deducted from them. The evidence both of masters and men is perfectly conclusive and coincident on one point—namely, that the amount of the reduction is regulated by no fixed rule or principle; that it is not dependent upon the value of the frame, upon the amount of money earned in it, or upon the extent of work made; that it has varied in amount at various times and at different places; that the youthful learner or apprentice pays the same rent from his scanty earnings as the most expert and skilful workman; and that the practice of this charge has existed for upwards of a century. It is curious to read the form and classification of the stoppages, and how adroitly the poor weaver is mulcted in every direction. They are as follows:—

- | | | |
|--|--|--|
| 1. Frame rent. | 10. Winding materials on bobbins for workmen. | I. EXTRA-JUDICIAL COURTS, OR BOARDS OF CONCILIATION.

System of frame rents and charges.

Frame rents and charges. |
| 2. Machine rent. | 11. Seaming and stitching. | |
| 3. Carrier rent. | 12. Needles. | |
| 4. Shercock rent. | 13. Oil for frames. | |
| 5. Frame standing. | 14. Candles or gas. | |
| 6. Giving workmen material to manufacture. | 15. Coal for use of waste steam to heat the shop or factory. | |
| 7. Turning hose from rough side to small. | 16. Dozenage. | |
| 8. Straightening and tying up goods for warehouse. | 17. Poundage. | |
| 9. Taking in goods to the warehouse. | 18. Fines. | |
| | 19. Defective work. | |
| | 20. General superintendence. | |

I EXTRA-
JUDICIAL
COURTS, OR
BOARDS OF
CONCILIATION.

Statement
of Mr. Chaw-
ner.

Mr. Joseph Chawner, who was examined by the committee, gave the following illustration of the charges made on one week's earnings of a weaver:—

“I have a case here in which I have taken down the charges; it is an instance in my own shop; it is the expenses attendant upon a yard-wide frame to the journeyman having £1 worth of work from the warehouse.

	£	s.	d.
Frame rent,	0	3	6
Stitching,	0	2	6
Winding,	0	1	3
Standing, and taking in,	0	0	6
Needles,	0	0	4
Candles,	0	0	3
Coal,	0	0	3
	<hr/>		
	0	8	7
• Work performed,	1	0	0
	<hr/>		
Balance,	0	11	5

The rent of frames is high in comparison with their cost. They are generally purchased second hand at from £4 to £8; for narrow or very wide frames £10 to £12 each may be given. Rent is charged by the hosier at the rate of from 9d. to 3s. per week, according to width and quality—1s. is the rent for the bulk of narrow frames. Other heavy charges are made when the undertaker employs the frame. The average value of frames during the last half century has materially diminished, while the rent, strange to say, has followed an inverse direction.

In 1777, curiously enough the very year in which the Embezzlement Act of 17 Geo. III. c. 56, was passed, the frame-workers of Nottingham, Middlesex, Leicester, Derby, Northampton, and Gloucester, petitioned Parliament, stating that they were in great distress, and that with the utmost industry they could exercise they were incapable of obtaining the common necessities of life, not only on account of the lowness of their wages, but by reason of “the payment of frame rent and other charges in keeping the frames in working order.” The grievance began with the “bag-man” engrossing the frames and letting them out to hire. It was the beginning of a powerful and crushing monopoly on the part of the masters to exercise the right to charge on the one hand a fixed weekly rental for the use of a tool to work with, and on the other to reserve to themselves the right to prevent the

Petition of
the frame-
workers of
Nottingham,
&c., in 1777 to
Parliament.

renter of the tool from having the free and uncontrolled use of it during the time it was rented. Further, when the "bagman" could not find full employment he prevented the renter of the tool from working it for other parties. He also exercised the right of only allowing the workmen to begin at a certain hour and leave off work at another certain hour. To increase, moreover, his power of control, he kept on further engrossing the frames, by which he acquired the means of forestalling the markets, and retaining the power of making what deductions he pleased. The petition was referred to a committee of the House of Commons, who agreed that the petitioners ought to have redress; but upon a bill being brought in it was somehow or other defeated. Another petition was presented in the following year, and another favourable report was made, upon which Mr. Meadows, then member for the county of Nottingham, introduced a bill, which was described by Mr. Robert Smith (afterwards Lord Carrington), while speaking in favour of the measure, as one "moistened and saturated with the tears of the poor distressed families." This measure was defeated on the third reading by the activity and energy of the hosiers, who had organized a powerful parliamentary opposition to it. This defeat led to riots in Nottingham, and the masters, to appease the men, promised "that they would remove every grievance;" but that promise was never fulfilled, and the framework knitters from that day (1778) to this have never ceased crying out against the cruel system of "rents and charges."

The frame knitters' condition is thus summed up by Mr. J. Ward, to whose book upon "Workmen and Wages" we must here acknowledge our obligations:—"He agrees," says he, "to hire a frame for a week; the master agrees to find him full employment, but he only employs him for a portion of the week on certain days and within certain hours, and refuses to permit the workman to work in a hired frame except upon his material. A workman, for instance, goes on the Monday morning to work, and receives as much material as will last him perhaps six hours; he again goes to the master for more 'to go on with.' The master says, 'Well, you must come again in the morning; I've not got any stuff.' The man replies, 'Well, I can get a little work from my neighbour, if you have no objection to my working in his frame, master.' The master rejoins, 'But I have, though, and will not allow it.' This may be the case every day in the

I. EXTRA-
JUDICIAL
COURTS, OR
BOARDS OF
CONCILIATION.

Bill introduced;
defeated by
influence of
masters.

Riots in
Nottingham
in consequence
of
bill being
defeated.

Condition of
frame knitters.

I. EXTRA-
JUDICIAL
COURTS, OR
BOARDS OF
CONCILIATION.

Hardships of
workmen.

week, and at the end the man may only have been employed half the week, and consequently have only earned half the wages he would have done had he either been fully employed by the master or allowed to obtain work elsewhere. The workman could have earned full wages—12*s.*, but by being only half employed he only earns 6*s.* The master, notwithstanding it was no fault of the workman's not earning more, deducts 3*s.* 6*d.* from the 6*s.*, gives the man 2*s.* 6*d.*, and charges just the same for frame rent as though he had given the man full employment—the same for the master's superintendence as though the master had furnished the man with the full amount of material—the same amount for winding for half a week as for a whole week, although the master had not had it 'wound;' and, in fact, he charged the workman exactly the same as though he (the master) had fulfilled his part of the contract, and allowed the workman to earn 12*s.* instead of 6*s.*, and had to receive 8*s.* 6*d.* instead of 2*s.* 6*d.* These facts must speak for themselves."

Strike of
framework
knitters.

Notwithstanding the miserable condition of the framework knitters, and the evils which they had to contend against, strikes did them infinitely more harm than good whenever they were resorted to for the amendment of their grievances. The strike of the knitters in 1817–18 had an effect upon our export trade of hosiery which is felt to this day. In those years, the foreign buyer of hosiery being unable to obtain his usual supplies from the English manufacturer in consequence of the turn-out, went to Germany to make his purchases. From that period the Germans obtained a hold of the export trade of hosiery, which they have largely increased, and which was mainly acquired by the numerous strikes of the workmen in this country. Chemnitz, in Saxony, sprung up to be the rival of certain of our manufacturing towns in the stocking district, and in neutral markets the Saxon hosiers have long run us hard, especially in low priced goods.

Provisions of
17 Geo. III.
c. 53.

Whoever considers the Embezzlement Act of 1777, passed in the very year of these futile parliamentary struggles of the workmen (the highly penal provisions of which we have already referred to), in the light of the preceding facts, and more especially the successful opposition of the masters to the bill, truly characterized by Lord Carrington as "moistened and saturated by the tears of the poor distressed families," can be at no loss to account for the disgraceful and tyrannical penalties of hard labour and whipping

numbered among its multifarious provisions. With regard to the petty offences to which these punishments were awarded, they may be considered as almost directly attributable to the systematic grinding of helpless workmen by hard and griping masters, whose influence seems to have swamped the House of Commons of those degenerate days, which legislated effectually for the "pirns, bobbins, and remnants" of the masters, but left the poor workers no alternative but to starve or steal; yet it is only last year that this Act, which is still a blot upon the British statute book, has been modified in a very faint and half and half manner by the "Master and Servant Act, 1867," which, imperfect as it is, and as if fearful that it had gone too far, its promoters have provided shall only endure for a year (a).

I. EXTRA-
JUDICIAL
COURTS, OR
BOARDS OF
CONCILIA-
TION.

Throughout the present century, down to the year 1860, strikes and lock outs were frequent in Nottingham and the other places referred to, and in years of brisk demand the trade was constantly subjected to loss and embarrassment consequent thereon. Trades unions existed in every branch from about 1780. The trade has always had to maintain a sharp competition with the foreigner, and especially against the cheap labour of Saxony. From their dissensions both the capitalists and the workmen have been frequent sufferers. Strikes were usually resorted to by the workmen as their only means of redress. Frame breaking and burning in effigy were succeeded in more modern times by gross personalities and inflammatory placards. It was in this state of matters that the remarkable changes which we are going to notice took place, forcibly illustrating the old saying that "when things come to the worst they must take a change."

Recent
strikes in
Nottingham.

It is not to be supposed that the workmen of Nottingham were worse than those of other places, or less intelligent or independent, or that the frightful state of matters which at one time existed was the fault of the operatives. On the contrary, one who knows them well, and to whom we are indebted for important information on the subject, Mr. Mundella, who was himself a workman, but who by his talent and energy has raised himself to be an employer, and is now president of the Board of Conciliation and Arbitration in Nottingham, bears forcible testimony the other way. According to this gentleman, they inherited a legacy of

Testimony
of Mr. Mun-
della, presi-
dent of Not-
tingham
court.

(a) The only sections superseded are the eighth and nineteenth; *ante*, pages 102 and 106.

**I. EXTRA-
JUDICIAL
COURTS, OR
BOARDS OF
CONCILIATION.**

Strike in
Nottingham
of 1860, and
consequence
thereof.

Meeting of
masters and
workmen.

traditional hatred of employers from their fathers and grandfathers. Strikes were a sort of daily bread with them, and he honestly admits that the fault lay as much with the masters as with the men. The strike of 1860, which took place immediately before the formation of the Court of Conciliation, occurred shortly after the orders for the American fall trade were taken in, and when the time appointed for the delivery of the goods came, none had been manufactured. It must be borne in mind that it was a strike in a single branch only, and that the branches not on strike supported this one in its resistance. The inconvenience and loss to the manufacturers was very great; and after it had continued some eight or ten weeks they assembled together to consider what steps should be taken to bring it to an end. There seemed to be a general feeling that there were just two courses open—one was to submit to the demands of the workmen, the other was to stop all the other branches of the manufacture, and to lock up all the factories, in order to deprive the men on strike of the support afforded to them by their fellow-workmen. Happily there were some present at that meeting who, wearied with the constant strife, and shocked at the social mischiefs accruing therefrom, suggested that conciliatory means should be tried, and that an effort should be made to end at once and for ever the bitter feuds which had characterized the trade for more than a hundred years. After considerable discussion a resolution was carried, and a handbill was issued, asking the workmen to meet the masters and endeavour to come to a settlement. The workmen accepted this invitation, long discussions followed, and the strike was settled by mutual concessions, upon the express condition "that a board of arbitration shall be formed to prevent such calamitous disputes in future." The workmen proceeded immediately to elect their representatives by the universal suffrage of the members of the trades unions. The manufacturers called a general meeting of their own body and elected theirs. The number finally agreed upon was nine from each class, and on the 3rd of December, 1860, these eighteen persons met together to carry out the proposed scheme. It may be imagined under what difficulties their first deliberations took place. There were no rules or precedents to guide them. Many of the manufacturers, and many too of the workmen, regarded the scheme with suspicion and distrust. By others it was received with ridicule and sneers

as an Utopian idea, emanating from the brain of sentimental enthusiasts. As, however, about two-thirds of the manufacturers were induced to give it a trial, and as the more intelligent of the workmen were of the same mind, they persevered. If in endeavouring to carry out this novel organization they had not committed some mistakes, it would have been indeed surprising, but on looking at the results it is wonderful to observe how few there have been. Mr. Mundella, who took the most active part in accomplishing this happy result, says emphatically—"I do not say that the rules by which we are governed are in themselves models of unerring sagacity, but I do say, for the encouragement of all those who desire to achieve the like happy results, that from my own past experience, whenever men meet together *with the honest desire to arrive at the truth, and to do justice to each other, a good understanding is almost sure to follow.*" We have no doubt that he is right in his opinion. At all events, the sooner masters and workmen put it to the test the better.

I. EXTRA-JUDICIAL COURTS, OR BOARDS OF CONCILIATION.

Masters and workmen agree to form a board of conciliation and arbitration.

At the first meeting, a president and vice-president were elected, and a committee were appointed to draw up rules. With reciprocal courtesy, the working men proposed a manufacturer as president, and the masters a workman as vice-president, and this established a custom which has ever since been followed. The rules were produced at a subsequent meeting (b), and they have since remained unaltered. It is not to be supposed, however, that further difficulties were not encountered, and that some mistakes would not be made; but, having kept one object in view—the adjustment of all questions relating to wages in a friendly and amicable spirit—they succeeded in surmounting them all. There were instances, indeed, in which employers acted contrary to the decrees of the Board, and also where workmen refused to accept their decisions; but the steady adherence of the majority of both parties to the decrees adopted, sooner or later brought the dissentients back to their duty. Gradually and surely the organization increased in numbers and strength, until now the whole of the hosiery trade of the Midland Counties is on their side; that which was originally intended for Nottingham now governs Derbyshire and the south side of Leicestershire as far as Loughborough; and during last year Leicester and the north

Proceedings at first meeting; election of president.

Rules.

Increase of organization.

(b) For Rules and Report see Appendix.

I. EXTRA-
JUDICIAL
COURTS, OR
BOARDS OF
CONCILIATION.

Working of
Board.

of Leicestershire formed a Board of their own, with rules improved by the experience gained by the Nottingham Court.

And now to illustrate the working of the Board in detail. The articles manufactured in the hosiery trade are exceedingly numerous. All work is paid for by the piece, at the rate of so much per dozen. From time immemorial these rates have been fixed by printed statements, and the battles which were formerly fought were as to whether masters or workmen should make these statements. Since the formation of the Board all variation in prices upon work done have been referred to it, and no statement is considered legitimate without the signatures of its members. The simple fact is, that the employers, who represent the buyers of labour, and the workmen, who represent the sellers of labour, sit down together, and mutually bargain about what price shall be paid for the commodity. It is very rare that the price originally proposed by either masters or workmen is the price ultimately agreed to. Some alterations or concessions are generally made on both sides, and the price once fixed is mutually binding.

Mutual
concessions
by masters
and work-
men.

In times of depression, when foreign competition has interfered with any branch, a fair reduction has been generally submitted to, and in times of prosperity, when advances could fairly be given, they were invariably conceded; but in order that the trade might not be taken by surprise, that manufacturers might finish their contracts in time of advance, and that no hasty decision might be made against either party, there is a resolution in the minute book that a months' notice shall be given before any change of prices can be discussed. Owing to the variable character of the trade, small differences and disputes are constantly arising. Some extra work may be required in an article, for which the workmen may think a shilling would be a proper compensation, while the manufacturer may regard sixpence as sufficient. All such questions are in the first place referred to a committee of inquiry, and are generally there settled. Should the committee, however, not be able to agree, they are finally adjusted by the Board itself.

Benefits to
masters and
workmen.

It only remains to inquire how far the action of the Board has benefited employers and workmen. This is clearly shown by the last report of the Board, the concluding paragraph of which states:—"The facts which the Board points to as the best proof

of its success are, that during the six years of its existence no strike or lock out has taken place, no personal attacks have been made, and no inflammatory handbills have been circulated. Never in the history of the trade has there existed so much good feeling betwixt employers and employed as at the present moment; and during the past two years, wherein labour has been scarce, and agitation on the question of wages prevalent throughout England, the manufacturers in this branch of industry have been able to accept contracts without apprehension, and to execute them without delay."

I. EXTRA-
JUDICIAL
COURTS, OR
BOARDS OF
CONCILIA-
TION.

Strikes rarely occur in times of depression. It is when trade is good, and the manufactured article is in brisk demand, that disputes concerning wages result in strikes, so that the employer loses money at the most favourable time for making it, and the workman loses his earnings at the time when he should be gaining a surplus, and the customer is driven elsewhere for his goods, perhaps never to return. All this is avoided under the system inaugurated at Nottingham. One excellent feature of arbitration is the certainty which every manufacturer feels that the rate of wages throughout the trade is uniform for the same description of work. The employer who had the least conscience formerly had his work done at the lowest price, but now, when the workman is unable to protect himself in times of depression, the manufacturers on the Board step in to his assistance to prevent the undue depreciation of his wages. Another fact consequent upon the introduction of this system is worth notice. While trades unions in Nottingham are stronger than they were before in numbers and unanimity of purpose, there are no longer any salaried officers connected with them. The chairman and members of committee perform their duties gratis, and the secretaries work at their trade, only being paid for lost time. There is another point to which attention may also be drawn—viz., the direct advantageous results to the workman. Formerly he suffered fearful privations during strikes. These are now at an end. When at work he had to contribute largely to trades unions to obtain the funds necessary for striking. These large contributions are also at an end. One shilling a year from each member is now found to be sufficient to defray all the ordinary expense of the trades unions. Taking these two advantages together, here of itself is a large advance of wages without one

Losses to
both parties
avoided.

Trades
unions in
Nottingham
stronger
than ever.

I. EXTRA-
JUDICIAL
COURTS, OR
BOARDS OF
CONCILI-
ATION.

Harmony
between
masters and
workmen.

farthing of it coming out of the pockets of the employers. But there is something more. "The hatchet of war," as Mr Mundella well expresses it, "has been buried, and if it were dug up again to-morrow it would be found to be rusted and blunt, and the arms that formerly wielded it would be unaccustomed and unwilling to do so again." Master and workman have learnt by meeting together on common ground to respect and understand each other; the workman is better acquainted with the difficulties of the master, the master with the wants and struggles of the workman, and mutual forbearance and mutual respect have grown from constant and courteous intercourse. Among the representatives of the workmen have been found leaders of trades unions, who have displayed remarkable wisdom, tact, moderation, and self-denial in co-operation with their employers. Surely it is no small result that this organization has within a period of seven years done so much to eradicate the accumulated hatred of two centuries; and what has been done in Nottingham that cannot be reproduced in any of our centres of manufacturing industry? What is to prevent those trades now on strike or locked out from peacefully adjusting all questions of dispute—the workmen co-operating with the masters to combat foreign competition, and saving those earnings which have been so lavishly wasted in strife for the day of sickness and the approach of old age? In the eloquent words of Mr. Mundella at the close of his address on this subject at Sheffield, in October, 1867:—"As citizens of one common country, acknowledging one God and Father of us all, it behoves each and all of us to do something to bring about this result, and to efface the blot from the fair pages of the annals of our land. I would humbly exhort you to try it. Try it, and however small may be the beginning—however modest may be your first attempt, a blessing will crown your endeavours, and at the advent of the New Year, when the bells of your churches shall

'Ring out the old, ring in the new,'

they may also

'Ring out a slowly dying cause,
And ancient forms of party strife;
Ring in the nobler modes of life,
With sweeter manners, purer laws.'"

The Nottingham court is still in full operation and vigour, extending its blessings both to masters and men, as may be seen

from the subjoined letter from Mr. Samuelson, M.P., which appeared in *The Times* of 18th April, 1868.

I. EXTRA-
JUDICIAL
COURTS, OR
BOARDS OF
CONCILIATION.

SIR,—“Your columns are again being filled with reports of trade disputes in the iron districts, as usual, but now also among the colliers. In the present depressed state of trade the men will probably be compelled to give way, just as the masters were obliged in the greater number of cases after a struggle to submit to an advance of wages when coal and iron were in greater demand. If these disputes were confined to the immediate locality in which an advance of wages is demanded or a reduction enforced, the ill-blood created, the capital destroyed, the hunger endured by women and children and subsidiary labourers, would be sad enough. But the evil does not end here. The men seek and obtain sympathy from their fellows throughout Great Britain, and the masters unite for defence, if not for aggression, until every local contest becomes a war of capital against labour, not only in Lancashire or in Staffordshire, but over the length and breadth of the land. Thus the country suffers equally whenever the demand for labour increases and when it slackens. When strikes or lock outs have lasted for months it is usual for some gentleman of great benevolence, but generally possessing little knowledge of the relative strength of the contending parties, to offer his mediation, which is thankfully accepted by those who feel themselves worsted, and contemptuously declined as an improper interference by the winners. Such mediation is rarely of more use than would have resulted if some philanthropist had interfered during the cotton famine between the merchants of Liverpool and the spinners of Preston, to arrange that cotton ought not to be sold for more than 17½d, and had declared 18d to be an extortionate price, and that public sympathy would be with the manufacturers unless the importers abated their demands of the extra farthing. And yet fluctuations in the price of merchandise occur from day to day. They are settled by “the higgling of the market,” in other words, by compromise and conciliation; and what is done in the market for commodities can be done in the market for labour. I say it can be done, because I know that it is being done. For the last nine years the hosiers of Nottingham have settled wages by the mutual consent of masters and workmen. I believe the carpetmakers—all except those of Kidderminster, who still prefer strikes and lock outs—have done so for nearly twenty years. The lacemakers of Nottingham refused to follow the example of the hosiers until last autumn. When I visited Nottingham in the summer, lace frames were standing idle in nearly every factory, mainly because every change of fabric produced a dispute as to wages. At length a Board of Conciliation—a labour exchange, for it is nothing else—was established. The result is that, as your trade correspondent tells you, “the lace trade is brisk,” and as I am informed by one of the principal manufacturers of Nottingham, “not a machine is idle, and all is at peace for the first time within the memory of man.” The masters and workmen of other trades will deserve their inevitable fate if they refuse to lay aside their feuds and follow the example of Nottingham.

I am, Sir, your obedient servant.

3 Grosvenor Gardens S.W.

B. SAMUELSON.

CHAPTER II.

BOARDS OF ARBITRATION UNDER THE ACT 5 GEO. IV. C. 96 (1824).

II. BOARDS
OF ARBITRA-
TION UNDER
5 GEO. IV.
C. 96.

It will be recollected that the above Act provides that disputes between masters and workmen may be adjusted by a different mode of arbitration from that specifically provided by the Act. The section which makes this provision is the thirteenth. It is in the following terms:—

“ Provided, always, and be it further enacted, that *as well* in all such cases of dispute *as aforesaid*, as in *all other cases*, if the parties mutually agree that the matter in dispute shall be arbitrated and determined in a *different mode* to the one hereby prescribed, such agreement shall be valid, and the award and determination thereon final and conclusive between the parties; and *the same* proceedings of distress, sale, and imprisonment, as hereinafter mentioned, shall be had towards enforcing such award (by application to any justice of the peace of the county, stewartry, riding, division, barony, city, town, burgh, or place, within which the parties shall reside) as are by this Act prescribed for enforcing awards made under and by virtue of its provisions.”

It would thus appear to have been the intention of the legislature to give power to masters and workmen to enter into references or submissions, and to enforce the awards pronounced by means of the machinery of the 4 Geo. IV. c. 96. Before, however, pointing out how the Act may be taken advantage of for the purpose contemplated, it may be as well to refer to the system which has been acted upon at Wolverhampton in the carpenters and joiners' trade, as explained by Mr. Rupert Kettle (a).

System pur-
sued at Wol-
verhampton.

In the spring of 1865 it appears that a strike was threatened in the building trades of that town. The mayor called a public meeting of the trades to devise, if possible, some means of preventing it. A meeting was accordingly held, at which one branch of the building trade—the carpenters and joiners—appointed

(a) *Strikes and Arbitrations*, by Rupert Kettle. London: Simpkin, Marshall, & Co. 1866.

six delegates to confer with a similar number from the masters, with the view of arranging their differences. The twelve delegates met and chose a chairman. A list of six names was prepared by each party, and means were taken to determine by chance whether the masters' or the men's list should have priority of consideration. As the first name upon both lists happened to be the same, no difficulty was experienced in fixing upon a chairman. Nothing more was done at this meeting, except agreeing upon the mode of communicating with the chairman. Upon accepting office, he requested both sides to furnish him with their respective drafts of any list of prices and trade rules they proposed to establish, and such reliable information upon the subject as could be obtained from other localities.

II. BOARDS
OF ARBITRA-
TION UNDER
5 GEO. IV.
c. 96.

Upon an early day afterwards the twelve delegates met again. The business was conducted like that of any ordinary committee meeting. The rules upon which both parties were agreed were first read and adopted. Those upon which there was any difference of opinion were then separately discussed. The discussion was conducted with perfect freedom upon both sides, the chairman, or umpire, as we may call him, keeping each speaker to the immediate point in dispute, and seeing that the exact meaning of each individual was clearly ascertained. Each of the contested rules, after being duly sifted and turned over, was finally agreed to without a division, except in one instance, which resulted in a majority against the proposition, so that the umpire did not require to give his opinion. Each rule was minuted after being passed, and at the end, the whole minutes were read over and approved of. An adjournment was made till next day, and in the interim the chairman framed formal rules from the minutes. At the adjourned meeting three copies of these rules were signed by the respective delegates, and by the chairman or umpire—one copy for each party and one for himself. Printed copies were forthwith posted in every workshop, and were accepted by the several masters and workmen as the terms of the contract of each with the other respectively. Thus was laid the basis of arbitration.

System pur-
sued at Wol-
verhampton.

Business went on under the rules so established for about eight months without any dispute; a question, however, then arose between one of the master builders and some of his carpenters as to the proper construction of one of the rules, which

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provided for working in the winter months upon unprotected buildings. The matter was brought under the cognizance of the umpire by written notice from each of the parties, upon receiving which he immediately ascertained what day would be convenient for them to have the matter discussed, and then called a meeting of the delegates, who had, of course, by the operation of the individual contracts of service, become arbitrators in the dispute. The parties were called upon through the secretaries of their respective societies to attend the hearing, just as if they were parties to an ordinary reference. Two men, who represented the workmen, appeared, and also the master. The men, as being the complainants, were asked to state their case. The master answered their statement. The arbitrators who were workmen were then severally asked their opinion, and afterwards the same process was gone through with those who were masters. There was a pretty general conflict of opinion on the subject, and the matter being referred to the umpire, he decided that the men had put the true construction upon the disputed rule. He offered to make an award which could be legally enforced in a court of law; but the master said that there was no necessity to do so, as he willingly acquiesced, and would pay the men the sum according to the view of the rule which had been sustained.

It is gratifying to be told that the proceedings were throughout conducted in the best spirit, and that this first essay of workmen in forensic conflict was creditable to all parties. There was a good deal of energy expended in support of both sides of the question, and some share of the warmth of the partizan was probably communicated to the judges; but there was no loss of temper, and both sets of litigants separated with higher opinions of each other's honesty and powers of argument than they had entertained before, and with perfect confidence in the fairness and impartiality of the arbitrators. Had there been a dispute as to matters of fact, instead simply as to the mere construction of a rule, of course evidence would have had to be adduced by both parties, or the locality would have to be visited, or measurements taken—in short, everything which it is usual for judges or arbiters to do to possess themselves of the facts would have had to be done. When both parties had concluded their evidence, they would, as a matter of course, be heard in support of their respective pleas, and a decision would have been arrived at either by a majority of the

delegates, or by reference of the matter to the umpire, as in the preceding instance.

One of the Wolverhampton rules provided that the code should come into operation on the 1st of May, and continue until the 1st of May in the year following, and so on from year to year until either party should give notice, in the month of January in any year, that they would require an alteration of the rules on the first of May following. The agreement for a year from May to May was adopted as suitable to the building trade, in which tenders for work are generally called for in the spring, and in which one complete turn of the market as to the value of labour may be fairly taken to be included within a year commencing in the spring.

In the month of January, 1866, the chairman received notice from both masters and men that they required alterations in the rules on the 1st of May following. Each notice stated specifically what alterations were required, and were severally served by post upon the chairman and upon the secretaries of the masters and men's societies respectively. The proposed changes embraced very important subjects, a rise of wages, Saturday half-holidays, alterations as to walking time, the payment for work upon un-protected buildings, &c.

Having ascertained that both parties were prepared, the chairman appointed a meeting as before. The parts of the general rules proposed to be altered were again fully discussed, and after one adjournment all points debated were finally agreed upon by the unanimous votes of the twelve delegates, so that, upon the third trial, arbitration came out again triumphant. The rules so altered were reprinted, and were again posted in each workshop, and formed by individual contract the terms of service in that branch of the building trade of Wolverhampton for the succeeding year, and until again altered as before pointed out.

Upon these rules for the carpenters and joiners' branch being successfully settled, a deputation of the plasterers met a deputation of the master builders, without having had any preliminary public meeting, but acting only through their respective trade societies, and agreed upon a code of trade rules to be drawn up and settled in the manner found so successful by the carpenters and joiners, and to refer the same, and all disputes, to the same umpire.

Such then, is an account of the method adopted successfully at

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sued at Wol-
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(Observa-
tions on this
system.

General law
of arbitra-
tion.

Advantages
of board act-
ing under a
statute.

Wolverhampton, almost in the very words of the president of the Board of Arbitrators, Mr. Kettle. It was, of course, merely an initiatory step; but any step gained in this direction is an important link in the great chain which we hope will yet bind the interests of masters and workmen in indissoluble harmony. Substantially it is the same course as that adopted in Nottingham, both being quite independent either of the Arbitration Act of 1824 or of the Councils of Conciliation Act of 1867.

While admitting, however, both these instances to be steps, and important ones too, in the right direction, we are disposed to think that masters and workmen should not stop short at mere extra-judicial arbitration. We would strongly recommend that they should endeavour to bring their organization under the provisions of an Act of Parliament. Neither the Arbitration Act of 1824 nor the Councils of Conciliation Act of 1867 is, however, sufficient for their purpose. The general law of arbitration applies to arbitrations between masters and workmen as well as to arbitration of disputes between other parties; and the law of England, at least, looks with a favourable eye upon this mode of settling disputes, both before as well as after an action has been actually commenced in a court of law: but a thoroughly liberal and workable Act of Parliament would operate, in the case of trade affairs, pretty much as a good constitution would to a newly settled and numerous and busy colony. It would insure order, confidence, and obedience in the body itself, and tend to foster an *esprit de corps*, so to speak, calculated to make coherent and permanent an institution which, if left to the mere *vis inertia* of voluntary association, would be liable to the risks affecting more or less the durability of all such institutions. What the boards require is direct recognition as tribunals invested with all the powers of judges, in relation to the special matters which they would be called upon to decide, without the ancillary operation of any court of law whatever.

In the meantime, and until this desirable end is attained, which it behoves masters and workmen to do all in their power to bring about, we must deal with the two Acts already referred to.

First, then, with regard to the provisions of the thirteenth section of the 5 Geo. IV. c. 96. In treating of this Act it may be as well to state that the procedure which we would recommend

to be followed with the view of securing the benefit of its provisions in enforcing awards, will be equally effectual to secure the aid of the competent courts of common law if preferred. The principles which underlie the present state of the law in England and Scotland, on the subject of arbitration, are the same, but the law of the former country has gone further in making precise provision for its operation. The Scottish courts, combining, as they do, both legal and equitable jurisdiction in the same judges, were not tied down to the rigorous distinctions in the various classes of actions which formerly prevailed to such an extent in England, and so did not require special authority to do many things which are provided for by Acts of Parliament in that country. English judges have been granted powers of compulsory arbitration; but Scottish judges cannot delegate their powers to arbiters in the same way. They may, however, make what are called *remits* to men of skill—to accountants in intricate matters of accounting, to engineers, and other parties—to investigate difficult matters, before whom the litigants will have every opportunity of being heard, previous to the result of the investigation being lodged with the clerk of court in the shape of a report framed in terms of the interlocutor or order of the judge when making the remit. This report is supposed to put the court in possession of the whole bearings of the matters remitted. The litigants are each allowed to see it, and to lodge any written objections they may have to it within a certain time. These objections and answers, if given in, may afterwards be debated before the judge, who disposes of the whole questions involved in it. The authority of the court is what is called *interponed* to the remit, but in all other respects it is virtually the judgment of the court itself, and not of the referee.

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c. 96.

Principles
regulating
arbitration
in England
and Scot-
land.

Powers of
Scottish
judges as to
referring
cases to arbi-
tration.

There is, however, a step in an action in Scotland which may take the case out of the hands of the judge altogether, called a judicial reference, which is arranged by the parties themselves, and to which the judge also interpones his authority.

Judicial refe-
rences in
Scotland.

In England the matter of arbitration has been very much simplified by the passing of the Common Law Procedure Act of 1854 (*b*), to which we shall have occasion immediately to refer.

Common
Law Pro-
cedure Act
in England,
1854.

So much, then, for what the courts of both countries will do in matters of arbitration, in a case which is pending before them.

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TION UNDER
5 IV. GEO.
c. 96.

Law of Eng-
land and
Scotland as
to enforcing
extra-judi-
cial awards.

But the important question remains as to what they will do to help out the extra-judicial arbitration of parties after an award has been pronounced. Here, again, the laws of the two countries recognize pretty much the same principles. By the seventeenth section of the 17 & 18 Vict. c. 125, every agreement or submission to arbitration by consent, whether by deed or instrument in writing not under seal, may be made a rule of any one of the superior courts of law or equity at Westminster on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of court. This privilege does not, however, apply to parole submissions (c).

Law of sum-
mary dili-
gence in
Scotland by
consent to
registration.

In Scotland this result was arrived at about two centuries ago, by the insertion in deeds of submission of a clause called a clause of registration, consenting to the submission and award following thereon being recorded "in the books of council and session or others competent," and providing that "a charge" to implement proceeding upon a decree or judgment interposed by the judge within six days, should have the same force and effect as if such charge proceeded upon a judgment originally pronounced by such judge himself (d). As a matter of course, such a privilege could not follow upon verbal submissions or awards (e).

(c) Russell on Arbitration, 61.

(d) Scottish Acts, 1685, c. 38; 1693, c. 15; 1696, c. 39.

(e) This mode of procedure in Scotland is termed "summary diligence," and it is followed in all cases of bonds for money and other obligations which a party has bound himself to perform, in which such clauses are invariably inserted. The same procedure is followed in recovering bills and promissory notes, upon which, although there is no clause of registration, the privilege of being so recovered was first conferred in the case of foreign bills by the Act 1681, c. 20, which proceeds upon the preamble, "how necessary it is for the flourishing of trade, that bills or letters of exchange be duly paid and have ready execution." A bill or note can be at once protested for non-payment, the protest recorded, and "a charge" given for payment within six days, failing which the amount can be recovered by distress, or pouncing and sale, or imprisonment. If the

party charged to pay has a good defence against payment, he can be heard upon it by presenting a note of suspension in the Bill Chamber of the Court of Session, a mode of staying proceedings at common law not known in England, except in some cases called prohibitions, but which in Chancery is known as a bill or motion for injunction or stay of proceedings. Suspension in Scotland is usually granted on security being found by bond, when the grounds of defence are at once heard and determined. It is believed that there is a strong objection in England to this summary mode of recovering bills; but when a man puts his name to a bill or bond, he should not have the power of compelling his creditor to raise an ordinary action in a court of law, and subject him to all the delay and expense of establishing his debt, as if it had not been previously constituted. This old principle of the law of Scotland, of registration for judgment, is the foundation of the bill lately intro-

The laws of both countries, however, recognize such submissions, but they are only adapted for matters of little importance. To have the full benefit, however, of efficient aid from courts of law, it is necessary that the submission and award should be in writing, and also that there should be a special nomination of certain arbiters to whom the disputes which may arise are to be referred. This has been accomplished in Wolverhampton by the adoption in the trade rules of what is called an arbitration rule, in the following terms:—

Rule . That if any trade dispute shall arise between master and workmen, such dispute shall be settled by the award of A. B. C. D., &c., on the part of the masters, and E. F. G. H., &c., on the part of the workmen (an equal number of masters and men), who are hereby appointed trade arbitrators, or by a majority of them, or in case they or a majority of them cannot agree, then by the award of Y. Z., who is hereby appointed umpire. That in case any or either of the masters' arbitrators shall happen to die or cease to carry on business in the town of , or be ill and unable to attend to the business of arbitrator during the continuance of these rules, then the survivor or remaining masters' arbitrators shall appoint another or other masters then carrying on business in the town of , in the place of him or them who shall have so died or ceased to carry on business, or become incapable of acting; and in case any or either of the workmen's arbitrators shall happen to die or cease to work as a in the town of , or become ill and incapable of attending to the business of arbitration during the continuance of these rules, then the survivors or remaining workmen's arbitrators shall appoint other journeymen then working in the town of , in the place of those who shall have so died or ceased to work or become incapable of acting. And in case either or any of the

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Submissions
and awards
should be in
writing.

Trade rule
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tion.

duced into the House of Commons by Mr. Crawford, M.P. for the Ayr burghs, intituled the "Judgments Extension Bill," by which it is proposed to make the judgments of certain of the courts of each of the three countries effectual in the other, by simply recording them in the books of the courts referred to in the bill. It is a remarkable instance of the slow progress of legal improvement in these islands, that a judgment obtained in London is at the present day of no force in Edinburgh or Dublin; and that although the action in which it was obtained may have exhausted the whole facts of the case, and perhaps the fortune of the party succeeding in it, he would require, should the defendant choose to cross the Scottish Border or the Irish Channel, to follow his debtor and go over the whole con-

tention again! It may sound strange to be told, but it is nevertheless true, that England and Scotland, at least, are at this moment precisely in the position, in this respect, of foreign nations. A debtor may fly from London to Edinburgh, or from Edinburgh to London, but his person cannot be touched, though the English bailiff or the Scottish messenger-at-arms may have in either city the warrant of the highest legal officials of their respective courts for his apprehension. Lord Westbury has a useful, and, we trust, a brilliant career before him. While his triumphs at the bar and in the House of Commons as Sir Richard Bethell will rank with those of England's most famous advocates, let us hope that he will also prove himself, as he is well able to do, not inferior as a law reformer either to Romilly or to Brougham.

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masters or men appointed arbitrators shall be a party or parties to the dispute to be decided, other arbitrators shall, for the purpose of that arbitration only, be appointed in manner hereinbefore provided for filling up vacancies, and notice of every new appointment shall be given to the umpire immediately after it is made. That upon any dispute arising, either the master or workmen may forthwith give notice to the umpire of the same, who shall thereupon summon the arbitrators to meet at some convenient time and place within seven days, for the purpose of hearing and determining the said dispute. At the meeting so to be held, both parties and such others as the arbitrators or umpire may think necessary shall be heard, and both parties shall produce before the arbitrators and umpire such documents in their possession relating to the dispute as they or either of them shall require. The award of the said arbitrators, or a majority of them, or if they or a majority of them cannot agree, then the award of the umpire, shall be binding or conclusive upon all parties to the dispute arbitrated. The award shall be made within three days after the sitting, or if more than one, the last sitting of the arbitrators. The award shall not be void or voidable for want of form, and may be referred back for amendment in form to the arbitrators or umpire, as the case may be, by any judge or magistrate. No proceedings whatever, at law or in equity, shall be taken against either arbitrators or umpire, or any of them, for anything done under this rule.

And lastly, that the arbitrators hereinbefore provided are intended, between masters and workmen, to be, and for all intents and purposes shall be, taken and held to be under the provisions of section 13 of the 5 Geo. IV. c. 96.

That a printed copy of these rules, signed by the umpire, shall be taken as a true copy thereof in any court, or before any judge or magistrate, and shall in all civil proceedings be read as and for the original, without requiring any further consent from either party for so reading such copy in evidence.

Trade rule
as to arbitra-
tion.

Another rule which was found to be useful in practice is the following:—

That in case any trade dispute or difference of a private nature shall arise between any individual master and any workman or workmen, by which the general interests of the trade are not directly affected, then in such case, before proceeding to arbitration under Rule , the master shall nominate one of the hereinbefore appointed masters' arbitrators, and the workman or workmen one of the hereinbefore appointed workmen's arbitrators, who shall, as soon as conveniently may be, meet together and endeavour, if possible, to arrange such private dispute or difference without proceeding to a formal reference; and in case the contending parties cannot so arrange such difference to the mutual satisfaction of both parties, the matter in dispute shall be determined by arbitration under Rule , as though no such meeting for conciliation had been held. Provided, always, that Rule shall for all purposes be taken to be entirely independent of and shall not be in any way affected by this rule.

A code of trade regulations having been agreed upon, embracing a rule upon the matter of arbitration, it only remains to consider the terms of the individual contract between each master and

workman. When men work in a shop or factory it is considered to be sufficient if a printed copy of the rules is posted up in some conspicuous place in the shop or factory, and that the parties verbally agree to the terms. The rules should, however, be read over to the men, so that there may be no pretext for afterwards pleading ignorance of them. In some colliery districts it is understood that it is usual to insert at the end of the rules printed under the Mines Inspection Act the special rules of the particular colliery, and to give a copy of both printed in a small book to each man upon his hiring. If these special rules contained an ordinary arbitration clause, it has been suggested that this giving and accepting the book of the terms of the contract and commencing work under it, would operate in law as a perfectly good submission to arbitration. In the case of illiterate parties, of course, it would be absolutely necessary to read over the rules, and when the contract was in writing and subscribed by mark, to have the subscription attested by witnesses. The necessary forms will be found in the Appendix. The thirty-second section of the Act enacts as follows:—

“ Provided, always, and be it enacted, that any *agreement*, submission, award, ticket, matter, or thing *under* and by virtue of this Act, or *relating to any other mode* of arbitration as aforesaid, shall and may be drawn up and written upon unstamped paper.”

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c. 96.

Suggestions
as to rules.

Clause as to
Stamp Duty.
s. 32.

An agreement by A. to employ B., and by B. to serve A., under such a rule as that before referred to, may fairly be held to be covered by this clause.

CHAPTER III.

COUNCILS OF CONCILIATION UNDER THE ACT 30 & 31 VICT. C. 105 (1867).

III. COUN-
CILS OF CON-
CILIATION
ACT, 1867.

As formerly observed, the Arbitration Act of 1824 disappointed the expectations which had been formed with regard to it. This result has been attributed to the fact of its being mixed up with justice of peace jurisdiction and forms of procedure, and being otherwise cumbrous and roundabout in its design. It does not seem to have struck masters and workmen, however, that it was capable of being made available for furthering their extra-judicial agreements with regard to arbitration, by enforcing the awards pronounced therein, for no advantage seems to have been taken of it for that purpose. It is worthy of consideration, however, whether the Act is not fitted to be beneficial in this respect.

With the intention, apparently, of giving greater encouragement to arbitration, it was for years a subject of consideration among some of our most prominent statesmen, and was one of the favourite speculations of Lord Brougham (a), whether it would not be possible to introduce some such system into this country as the Courts of *Prud'hommes* in France. With the view of promoting this object, it is understood that his lordship had sug-

(a) This work would in all probability not have been written but for a suggestion thrown out by Lord Brougham, which the author observed some time ago in the *Illustrated London News*, to the effect that it would be desirable that some lawyer should make himself acquainted with the working of the Courts of *Prud'hommes*, and explain it for the public benefit. This the author did in a series of articles published some time ago in one of the Glasgow daily papers. Since then the present work has been written. Just as the last corrections were being made upon this chapter, at the very place where the name of Lord Brougham

occurs, the author became suddenly aware, by casually glancing at the conspicuous type of a morning paper, that the great and gifted being was no more whose inspiration had first originated its design, and whose example had sustained through many difficulties and discouragements its execution. Some weeks before, the note at page 61 had been printed. That note could still be recast, or even cancelled, death having changed the state of then existing facts; but what is writ is writ. A mighty man has left the earth, but a great name and memorable deeds remain to be recorded in the pages of history.

gested that an English barrister should proceed to Paris with the view of making himself familiar with the working of the French Court of *Prud'hommes*, and lecturing afterwards upon it throughout this country, so as to prepare the public mind for a parliamentary measure on the subject. This suggestion does not appear to have been carried out, at least to the extent of lectures being delivered; and until the introduction of Lord St. Leonard's Bill the public were in possession of little or no information, beyond a vague notion that there were some such courts in France.

III. COUNCILS OF CONCILIATION ACT, 1867.

A bill, with a title somewhat similar to that of the Act recently passed (b), had been introduced into Parliament in the session 24 & 25 Victoria, but failed to become law. It is expressly stated in the preamble that the Arbitration Act of 5 Geo. IV. c. 96, and certain subsequent Acts, to which reference has already been made, are not repealed, but that, in order the better to facilitate the settlement of disputes between masters and workmen, it is expedient, without repealing the previous Acts, that they should be enabled, when licensed by her Majesty, to form Equitable Councils of Conciliation or Arbitration, and that the powers in the said Acts contained for enforcing awards made under, or by virtue of, the provisions of the Arbitration Act, 5 Geo. IV. c. 96, should be extended to the enforcing of awards, to be made by and under the authority of the Equitable Councils of Conciliation to be created by the new Acts (c).

It is provided that, if any number of masters and workmen in any particular trade or trades, occupation or employment, being inhabitants, householders, or part occupiers of any house, warehouse, or counting house, or other property within any city, borough, town, stewartry, riding, division, barony, liberty, or other place—and who, being a master, has resided and carried on the said trade or occupation within any such place for six calendar months previous to the signing of the petition referred to in the Act, and being a workman, has resided for a like period within any such place, and has worked at his trade or calling for seven years previous to the signing of the petition—shall, at a meeting

Masters and workmen may petition her Majesty to grant licenses to form councils.

(b) 30 & 31 Vict. c. 105.

(c) The essential difference between the 5 Geo. IV. c. 96 and the above Act is, that the latter is merely *permissive*, while the former can be made *compul-*

sory by the complaint of any party being brought under it. Whether the Councils of Conciliation Act will succeed without compulsory powers remains to be seen. We fear it will not.

III. COUNCILS OF CONCILIATION ACT, 1867.

specially called for the purpose, agree to form a council of conciliation or arbitration, and shall jointly petition her Majesty to grant them a license to form such council, to hold, have, and exercise all the powers granted to arbitrators and referees under the before mentioned Act of 5 Geo. IV. c. 96, and relative Act, and in such petition for the same shall set forth the number of the council, and also the names, occupation, and residence of the petitioners, and the manner in which the expenses of the said council and of the registry afterwards referred to are to be provided for, it shall be lawful for her Majesty, or her principal Secretary of State for the Home Department, to grant such license, provided notice of such petition has been published one month before the application for such license in the *London Gazette*, and in one or more of the local newspapers of the place from which such petition emanates.

Her Majesty or Secretary of State, may grant license.

Of whom council to consist.

The council is to consist of not fewer than two masters and two workmen, nor more than ten masters and ten workmen, and a chairman—the number to constitute the said council to be inserted in the license. No member can adjudicate in any case in which he, or any relation of his, is plaintiff or defendant. The court can be formed within thirty days after the grant of license.

Powers of council.

The council will have power to appoint their own chairman, clerk, or such other officer or officers as they may deem requisite, and can hear and determine all questions of dispute and difference between masters and workmen, as set forth in the said Act of 5 Geo. IV. c. 96, which may be submitted to them by *both* parties, and shall have, hold, and exercise all the powers and authority granted to arbitrators and referees by and under the various enactments and provisions of the said Act; and any award the said Equitable Councils of Conciliation and Arbitration may make in the case of dispute or difference submitted to them, under the said Arbitration Act, or under the present Act, shall be final and conclusive between the parties to such arbitration, without being subject to review or challenge by any court or authority whatever; and the said council are also empowered to adjudicate upon and determine any other case of dispute or difference submitted to them by the mutual consent of master and workmen, and the same proceedings of distress, sale, and imprisonment as are provided by the Arbitration Act of 5 Geo. IV. c. 96, and relative Acts, shall be had towards enforcing every

such award (by application to any justice of the peace of the county, stewardry, riding, division, &c., within which the parties shall reside) as are described by the said Acts for enforcing awards; but it is declared that nothing contained in the Act shall authorize the council to establish a rate of wages, or price of labour or workmanship, at which the workman shall in *future* be paid.

III. COUNCILS OF CONCILIATION ACT, 1887.

Not to fix future wages.

A quorum of not fewer than three (one being a master and another a workman) may constitute a council for the hearing and adjudication of cases of dispute, and may accordingly make their award; but a committee of council, to be denominated the committee of conciliation, shall be appointed, consisting of one master and one workman, who shall sit at such times as shall be appointed, and be renewed from time to time as occasion shall require; and all cases, or questions of dispute, which shall be submitted to the council by *both* parties shall, in the first instance, be referred to the committee of conciliation, who shall endeavour to reconcile the parties in difference. When such reconciliation shall not be effected, the matter in dispute shall be remitted to the council to be disposed of and contested as a matter in the regular course. This, it will be observed, is precisely the same course as that followed by the Court of *Prud'hommes*.

Powers and duties of committee.

The chairman of the council, who is to be some person unconnected with trade, shall preside at these meetings, and shall be appointed at the first meeting held after the license is obtained. When the votes of the council are equal, the chairman is to have the casting vote. No counsel, solicitors, or attorneys are to be allowed to attend any hearing before the committee of conciliation, except with the consent of both parties.

Chairman.

Counsel or solicitors cannot attend except of consent.

On the first Monday in November, in the year next after the first appointment of the council, and on the first Monday in November in each succeeding year, a council and chairman are to be appointed, who shall remain in office until the appointment of a new council; and in case of vacancies arising betwixt the fixed days of election in each year, caused by the death or removal of any member of the council, or of the chairman, an election is to take place within fourteen days, and another member is to be elected to fill up the vacancy from the class to which he may belong, or a chairman be appointed, as the case may be, and the

Appointment of council.

III. COUNCILS OF CONCILIATION ACT, 1897.

Qualifications of voters and members.

member or chairman so appointed shall serve the remainder of the year.

For the purposes of the Act, each person being twenty-one years of age, belonging to the trade having a license for a council, and being an inhabitant, householder, or part occupier of any house, warehouse, counting-house, or other property, who, being a master in such trade, has resided and carried on the same within the limits of any city, borough, town, &c., wherever an Equitable Council of Conciliation and Arbitration is formed, for the space of six calendar months previous to the ninth day of November in any one year, and, being a workman, has resided for the like period within the same limits, and has worked at his trade or calling for seven years previous to the ninth day of November in any one year, shall be entitled to be registered as a voter for the election of the council, and shall be qualified to be elected a member of such council: but the masters shall appoint their own portion of the council and the workmen theirs.

Duties of clerk.

The clerk of each division of the council is to keep a register of every person claiming to have his name inscribed on the register as a voter for the council, whether master or workman (but distinct from each other), the register to contain the name, occupation, and abode of each person engaged in the particular trade or occupation as set forth in the license granting the formation of the council; and he is also, upon the payment of a registration fee being made to him, to register the same immediately, or be liable to be fined for neglect, the fine to be applied to the funds of the council, which is empowered to fix and determine the amount of such fee and fine respectively; but if it shall appear that any person ought not to be so registered, the council can strike the name of such person off the register.

Mode of voting.

The clerk is, for the purposes of the Act, to be the returning officer, and is to convene meetings of masters and of workmen by advertisements fourteen clear days previous to the first day of November; and each class shall at such meetings proceed to nominate and elect members to the council for the year next ensuing, the votes to be taken by show of hands or division of numbers, and in such place as the council may authorize, the clerk to declare the names of the candidates who are elected, which shall be final and conclusive, unless a poll is demanded at the time the declaration is made; but a poll can only be

demande by those whose names are registered in the books of council. A poll being demanded by six registered voters, the council shall appoint a time and place for that purpose, where each voter shall be entitled to record his vote.

The clerk is, within seven days of nomination, in case of a poll being demanded, to declare the number of votes given to each candidate, and those who have received the largest number of votes shall be declared duly elected. The clerk is to continue in office until a new appointment shall be made. He is to keep a record of all the proceedings, and do and perform such other duties as the Act authorizes or the council may require.

The council may hold their meetings in any public room used for conducting public business, with the permission of the authority having the power to grant such permission; and every council elected shall from time to time make out a list of fees which shall be charged for any proceedings and other expenses under the Act; and are entitled to appoint such officers as may be necessary, and make such bye laws, rules, and regulations for their guidance and for the taking and scrutiny of the votes given for the election of members of the council, and also for the despatch of business, as they may deem necessary—such bye laws, rules, regulations, and fees not to be legal or binding in law unless and until they shall have been sanctioned by the Secretary of State for the Home Department.

The Act is declared not to extend to domestic servants nor to servants in husbandry.

There is an appendix of forms borrowed from those annexed to the Act 5 Geo. IV. c. 96, which consists of—

- 1st. Form of summons of a witness to be issued by chairman.
- 2nd. Form of award.
- 3rd. Form of endorsement extending the time limited for making the award.
- 4th. Form of acknowledgment of fulfilment of the award.
- 5th. Form of oath to be administered by the arbitrators to the parties and witnesses.
- 6th. Form of commitment of a person summoned as a witness before the arbitrators.
- 7th. Form of warrant of distress.
- 8th. Form of the constable's return to the warrant of distress.
- 9th. Form of commitment thereupon to the house of correction.
- 10th. Form of commitment where the warrant of distress is withheld.

Such are the provisions of Lord St. Leonard's Act. It is

III. COUR-
SELS OF CON-
CILIATION
ACT, 1867.

Defects of
measure.

Certain pro-
visions of
Arbitration
Act of 1824.

Objections
to the Act.

liable, however, to the objection which, as already mentioned, applies to so many of our legislative enactments. It is not complete in itself. There is no provision as to how the parties are to be brought before the council, nor as to the procedure which is to follow. The first form given is that of a summons against witnesses, but that, of course, pre-supposes a number of previous steps by minute of reference or otherwise. We have seen that in France a simple letter addressed by the secretary of the Court of *Prud'hommes* to the defendant, intimating the claim, and fixing a day for compearance, forms the first step in the process, and that on his failure to appear a formal citation is given by one of the officers of the court. In explaining the provisions of the 5 Geo. IV. c. 96 (Arbitration Act of 1824), we showed that where parties having a dispute or difference to settle did not both go before the justice, or agree by writing under their hands to abide by his decision, that either of them could make a complaint to the justice, and on proof by the examination of the party making such complaint that application had been made to the person against whom such cause of complaint had arisen to settle such dispute, and that the same had not been settled, such person could be summoned to appear before the justice within three days after making the complaint, notice being given of the time and place appointed in the summons for his attendance. In the event of the non-appearance of the defendant, the justice was empowered to name arbitrators, the number of whom was not to be less than four and not more than six, one-half of whom should be masters and the other half workmen, from whom one was to be chosen by or for the plaintiff and defendant. The arbitrators being thus nominated, the justice appointed a place of meeting, and they either decided the case, or when they could not agree went back to the justice, who decided it for them. Now, this round-about method may have been all well enough in the Act of 1824 (although the result has proved that it was not), seeing that it had at least the merit of being complete in itself; but how is Lord St. Leonard's Act to be carried out? It is true that the new provisions are designed to be worked by the old machinery of the Arbitration Act—a mode of proceeding which in the opinion of some people is much about the same thing as if the engines of a modern river steamer were intended to be worked by the boilers of the old *Comet*; but how is the process to begin? Is there to

be a verbal or written submission or reference of the matters in dispute? Will a simple letter of request, signed by both parties, addressed to the council, be enough, or must there be a regularly drawn up minute of reference? These questions are easily put, but the oracle is dumb. But why should the inevitable justice of peace be mixed up with the new court at all? It is intended for the purpose of letting masters and workmen settle their own differences, and the presence of the justice is, therefore, an intrusion. There is no doubt that this justice of peace element entailed all the feebleness which attended the Arbitration Act of 1824 to the grave dug for it at birth, and which is still yawning to receive it, although the "Councils of Conciliation Act of 1867" insists upon that which is virtually dead being regarded as still living, and refuses its sanction to the burial of the departed! Why will the legislature not take warning by the fate which has overtaken its previous bantling, and still persist in connecting two things together, the natural tendency of which is to pull in contrary directions? Are they afraid to trust the people with the organization and working of their own courts, without the ancillary supervision of justices and the parish constable? The commission of the peace was at one time a respectable institution. If greater discrimination and less electioneering influence were employed in recruiting its ranks, it might be so still; but it has come to this now, at all events in Scotland, that, so far as the judicial element is concerned, it is absolutely useless, and is indeed fast becoming a nuisance. It is an insult to British masters and workmen to insinuate, as this Act does, that they are not fit to be entrusted with the power of carrying out the decrees of the courts which they may establish under its provisions, or that the officers whom they might appoint to see these executed would not be so trustworthy or efficient as the tipstaff who obeys the behests of the important personage whom Shakspeare irreverently styles

III. COURTS OF CONCILIATION ACT, 1867.

Objections to the Act.

"The justice,
In fair round belly with good capon lined."

If the Council of Conciliation can bow the litigants into its chamber, why should it be denied the privilege of bowing them out again, and, if necessary, compelling them to respect its commands? If it is to be, besides, a self-supporting institution (and

III. COURTS OF CONCILIATION ACT, 1867.

Objections to the Act.

there is no reason why it should not, by means of charges applicable to the various steps of procedure necessary to be followed), upon what principle should the fees of all warrants and decrees go into the pockets of justice of peace clerks and their officers, instead of into the fee fund of the Court of Conciliation itself? Why, in short, should not that court, in the same way as its sister institution in France, which is supervised by no *juge de paix*, except merely as a returning officer at the election of the council, have the power of issuing its own summonses and warrants, and enforcing its own decrees, by its own officers, by means of distress and sale, arrestment, poinding, and imprisonment? Above all, why merely confer a power upon such courts to decide in matters which may be referred to it by *both* parties, instead of giving the court the same power as that bestowed upon the justices under the Arbitration Act, at least in the causes of dispute therein enumerated, to *compel* either a master or a workman to appear and answer to a complaint against him, and to decide it as the arbitrators could have done under the directions of the justices of the peace; and why should the Conciliation Court not also have the power given in that Act, to settle a rate of wages for *the future* with consent of both parties (d)? These are questions probably much more easily put than answered, but which, it is to be feared, would have their answer dictated by a morbid distrust of the people—a false and ridiculous fear doubtless, but none the less calculated to do infinite mischief, and to engender greater contempt for the governing classes than is probably caused by any other of their alleged shortcomings. If the Act is not adapted

(d) There is a good deal of unnecessary hesitation on the part of some excellent persons, for whom the author entertains great respect, as to giving compulsory powers to Courts of Conciliation. They think that the appeals to them should be voluntary. The fact, however, is, that although it is nearly a year now since the Act was passed, no court of which the author is aware has yet been established under it. Unless some means are devised for giving life to the principle involved, the Act will become a dead letter. If it is to be merely permissive it is not required, because masters and workmen, as we have already seen, can enter into effectual arbitrations without

it. There ought surely to be no hesitation about giving compulsory powers to a court composed of an equal number of masters and workmen to compel a workman or a master to appear and answer to a complaint within the scope of the Act. In no other way, it is to be feared, will arbitration come to be generally or effectually carried out. We have compulsory arbitration under railway and other Acts with regard to land, why not also with regard to trade disputes, before a court composed entirely of tradesmen? The justice of peace bugbear has left an impression upon the minds of some individuals similar to *frights* which people receive in childhood—never to be forgotten.

to meet the real wants of the times, the consequences to the measure may be soon foretold—it will be found that “a stone was cut out without hands, which smote the image upon his feet, which were of iron and clay, and broke them in pieces,” and that “the stone that smote the image became a great mountain and filled the whole earth.” Let our legislators be wise in time. That stone is the People, and the fate of the image may be easily predicted.

It is in vain to disguise the fact, that justice of peace tribunals, in Scotland especially, have neither the confidence nor respect of the country; and it is useless to expect that masters and workmen will be willing to form courts or boards tacked on to such a jurisdiction. An example of the state of public feeling on the subject is afforded by the following letter, which fell under the author's observation just as the last sheets of this work were being put to press. It appeared in the *Glasgow Herald* of 18th May, 1868:—

SIR,—At the Justice of Peace Court on Monday, a carter in our service was fined 2s. 6d., and expenses, for driving a cart on the side of which our name and address was not legibly painted. The offence was light, and the fine was appropriate; but this cannot be said of the expenses, which amounted to £1 17s. 6d., and which were paid to Mr. Douglas, the fiscal. With some difficulty, and after considerable delay, we have obtained details of these expenses, which we ask you to publish, in the hope that they may warn others against infringing laws which may bring them under the jurisdiction of the Justices' Court:—Taking information, 5s.; drawing complaint, 6s.; extending copy, 2s.; procuring warrant, 3s. 6d.; attending trial, 10s. 6d.; paid officer and witnesses, 4s. 6d.; paid clerk's fee, 6s.: total, £1 17s. 6d. The legality of these charges we do not allude to here; but what can be said for the justices who sanction the imposing of such expenses? It surely lies with them to reform this anomalous and extravagant, if not extortionate, cost of proceedings in their court.—We are, Sir, yours,

“WORDIE & Co.

“103 West George Street, Glasgow,
“18th May, 1868.”

Two days later the following leading article appeared in the same paper:—

“The publication of the letter of Messrs. Wordie & Co. in the *Herald* of Monday, has not unnaturally called considerable attention to the cost of “justices justice” in this city. We have heard a good deal of late of the delay and expense of the Court of Session; but though there is no delay in the Justice of Peace Court, and no excuse for prodigal charges, it proportionally far more than rivals in costliness the highest tribunal of the realm. The case of the firm

III. COURTS OF CONCILIATION ACT, 1867.

Objections to the Justice of Peace Courts.

Public feeling on the subject.

Condemned by the press.

III. COUN-
CILS OF CON-
SULTATION
ACT, 1867.

referred to is a very glaring one, certainly, but it is in no way unusual. They were cited to appear before the Court for some trifling infringement of the Carriers' Act, and were fined, as Mr. Montagu Tigg would have said, in "the ridiculously small sum of two and six." But this learned decision could not be arrived at without much preparatory labour and cost on the part of the public prosecutor for the justices, and his expenditure of time and money Messrs. Wordie & Co. were bound to pay. We are tempted to give for a second time the bill of charges which this half-crown's worth of justice entailed upon the unfortunate firm:—

Taking information,	£0 5 0
Drawing complaint,	0 6 0
Extending copy,	0 2 0
Procuring warrant,	0 3 6
Attending trial,	0 10 6
Clerk's fee,	0 6 0
Officer and witnesses,	0 4 6
	<hr/>
	£1 17 6

Was there ever such a quantity of sack to such a crumb of bread? The demands of justice and the justices, it will be observed, were satisfied with half-a-crown, but the prosecution could not be appeased with less than fifteen times that amount. We have no doubt that the bill given above is quite *en règle*, and that the official gentlemen have in this case charged nothing more than the law allows; but when we reflect that this taking of information, drawing of complaint, payments to clerk and officers, and half-guinea fee—that all this was about a cart with the owner's name illegibly lettered on it—we must regard the bill as one of those profound mysteries of law which nobody but gentlemen who receive such charming fees can adequately admire or understand. In the Police or Sheriff Courts, when a person is punished by fine for an offence, he pays the mulct and is done with it; but in this privileged court he finds the fine a very small part of the penalty. He is pleased, perhaps, to hear the justices take a kindly view of his offence, and that the law will look upon a mere nominal solatium as enough; but this is only the short prelude to the piper's tune he has got to pay. The important part, like a lady's postscript, comes last, and he finds it infinitely more expensive to pay for being prosecuted than for breaking the law. The fact is, people are beginning to ask whether, if Justice of Peace Court law cannot be dispensed more moderately, what is the use of the institution at all, especially with regard to a great number of cases over which it has jurisdiction in a city like this. The justices are, as a rule, men of respectable position, who perform their duties to the best of their abilities—that is, they are not Dogberries when the usual class of trifling cases come before them, and they vote with wondrous steadiness in flocks in granting or withholding licenses. Everybody knows that when a license is to be granted or refused, it depends not at all upon the justice of the case as to the decision, but whether enough of justices can be beat up on one side to outvote the other. Teetotal principles sometimes gain the predominance in the court after a hard drumming up of justices, and as long as the ranks remain intact the leader may grant or refuse as he pleases. If the moderate side are more successful in recruiting, then they

Justice of
Peace Courts
condemned
by the press.

in turn have matters all their own way. Justice in these circumstances is a mere farce, and nobody expects it, but depends solely upon a large muster of his friends. It is only "kinless loons" who have no chance. The license-taking public have got used to this sort of thing, we daresay, and don't mind it much, but it is worth referring to when we consider how very costly is the dispensing of such a peculiar species of justice. Law is dear at the cheapest rate, but when it is sold at most extortionate prices we may be excused for thinking that the court is assuredly not what it ought and was intended to be, viz., a popular tribunal—a cheap appeal by the Crown to the common sense of worthy gentlemen in offences of no particular moment. Law reform is becoming the order of the day, and it seems to us that the reformers have some work before them, either in purifying or extinguishing the Justice of Peace Court."

III. COURTS OF CONCILIATION ACT, 1867.

The attention of the author has also been directed to the subjoined letter in the *Journal of Jurisprudence and Scottish Law Magazine* for May, 1868 (e).

"SIR,—When one has to become the trumpeter of his own alleged good qualities, there is room to doubt the reality of these. Your correspondent 'J.,' with assurance worthy of a better cause, came forward in your March number to assert and defend the benefits and blessings of the Justice of Peace Small Debt Court. His wisdom was at fault in this, and if worthy of praise, it would have been better to have left its utterance to others. Unfortunately for 'J.,' his being an 'acting depute J.P. clerk,' and a most materially interested party in upholding the J.P. Court, not only derogates from the value of his opinion, but causes it to smack somewhat of the wish to maintain what to him may be advantageous, but, in the main, is a vicious system. At the end of his second paragraph he says, 'the latter (i.e., the J.P. Courts) are as much esteemed by the public, according to my experience, as the former,' i.e., the Sheriff Courts.

Justice of Peace Courts condemned by the press.

"I think that is a very important admission. Among certain classes, e.g., petty shopkeepers and parties having questionable claims, the J.P. Courts, being convenient for ignorance in law and carelessness in investigation, are 'much esteemed.' All who have any practical knowledge of the working of the J.P. Court well know the justice, ay, and injustice, there dispensed. 'Justices' justice' is more proverbial than flattering. But justices are hardly responsible for this, for they are scarcely left to form their own opinion. They are 'advised' by their clerk, whose interest is antagonistic to impartiality. His interest is to attract parties to his court, and thereby increase his fees, which is apt to induce him to become special pleader. Pursuers soon discover that the chances are in their favour, and that they have a friend in court. The J.P. clerk endeavours to make his court popular. Of course this popularity is with parties suing, but how sadly it is the reverse with defenders!

"To extend the J.P. Court jurisdiction to £12 is simply to aggravate the evil, and the proposal is too monstrous to deserve further notice.

"On the whole, the J.P. Court, as it exists, is pernicious. I refer to the entire jurisdiction. The Small Debt Court is a scandal, and its superior jurisdiction (if it may be so called) is not much better. Your correspondent in the

(e) Vol. xii. p. 289.

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February number very succinctly pointed out the evils of the J.P. Small Debt Court, to which attention should be again directed.

"In the other branch of that court it cannot fail to have been observed that party and local feeling, and, unfortunately, even favour, too much predominate over and above the blessed ignorance which is inherent in dilettante judges. Cases are brought before that court which would not be tolerated before a legally trained tribunal, and all because it is not very difficult to get justices whose wisdom is not their best qualification, or even to get justices who know too much of the case beforehand to permit them to adjudicate on it impartially, or to get others to sit in judgment who are too easily made to swallow things through the weight of personal authority.

Justice of Peace Courts condemned by the press.

"I have pointed out some of the defects of the J.P. Court, and the question arises, should that system be abolished, and the justices deprived of the pleasure of playing at judges? I think the J.P. Court is capable of being made a good and valuable auxiliary, as well as substitute at times, for the Sheriff Court. But it requires to be remodelled, and no great difficulty appears to lie in the way of curing the present system of its vices, and making the court truly an advantageous substitute and assistant.

"One of the first essentials to this is the appointment of a legal assessor, and not to leave the justices, for their legal advice and guidance, to the caprice of a biased clerk. If the justices had the assistance of a disinterested, legally-educated assessor to guide them in the legal and technical points of cases, their decisions would be cured of many of the absurdities at present committed, the dignity of the court would be raised, and it would be preserved from being the resort of desperate, and, it is melancholy to say, iniquitous cases which find their way before it. Such an assessor is not a novelty, as witness the appointment to magistrates.

K."

The preceding extracts furnish ample corroboration, if any were needed, of the statements contained in the earlier portion of this work (f). There can be no doubt that Justice of Peace Courts are radically vicious. It will be inexcusable on the part of government to permit them longer to remain in the notoriously scandalous state in which they now exist. The suggestions of "K." for their improvement are worthy of consideration, but the voice of the nation has gone forth, and it is to be feared that it has pronounced their inevitable doom—abolition.

The example afforded by the success of the Nottingham Court of Conciliation and Arbitration is one which will no doubt be followed by other communities; and should the government not at once lead, instead of being led by the people, the result will be—certainly one of a very humiliating if not dangerous character—that the people will learn to do that for themselves which their legislators have either been unable or unwilling to do for them.

(f) *Vide* pp. 34, 35, *et seq.*

CHAPTER IV.

TESTIMONY OF BRITISH ARTIZANS AS TO THE PRACTICAL WORKING OF THE COURTS OF PRUD'HOMMES.

IN bringing these chapters to a close, and in returning to the point from which we set out, we would direct attention to the reports published in December, 1867, of the artizans selected by a committee of the council of the Society of Arts to visit the Paris Universal Exhibition.

Reports of
British
artizans
sent to
Paris.

Although the special object for which the artizans referred to were sent to Paris was to report upon the various articles connected with their own trades, several of them notice in an incidental, and, of course, imperfect manner some of the legal and social institutions of France, and among others the Courts of the *Prud'hommes*. It is to the parts of their reports which deal with this subject that we propose now shortly to refer.

William Bramhall, saw-maker, Sheffield, says (p. 42)—“Trade associations for promoting strikes are illegal. The *Conseil des Prud'hommes* is a legal board for settling disputes between employers and employed. Its successes are well known. But recently nineteen tailors were brought to judgment for the late tailors' strike in Paris, and were mulcted in various penalties by way of asserting the law's authority. There are many friendly, sick, and funeral societies among working men, but freehold allotments are impracticable. There are thirty-seven co-operative societies in Paris, of whom the builders are the most extensive, entering into large contracts.” Mr. Bramhall does not seem to be aware that trade associations are now much upon the same footing in France as they are in this country. The Paris tailors to whom he refers must have been guilty of the same violation of the law as caused the trial and conviction of the London tailors some time since, and probably picketing was as rife in the one city as in the other

Report by
William
Bramhall.

The next reporter, Mr. John Wilson, cutler, Sheffield, appears

TESTIMONY
OF BRITISH
ARTIZANS.

Report by
John Wil-
son.

to have informed himself better. He says, p. 59—"Trade associations and wages cannot be overlooked in a report of this character. Trades unions do not exist in France. Previous to 1864 strikes were illegal. Articles 414, 415, and 416 of the *Code Pénal* forbid combinations to raise wages or reduce the hours of labour. The promoters of these could be imprisoned from two to five years. The same law forbids combinations of employers for the purpose of unjustly depressing the rate of wages (*tendant à forcer injustement et abusivement l'abaissement des salaires*). As it is difficult to say what is an unjust depression, the employers escaped scot free. This condition was altered in May, 1864—(Vide *Loi qui modifie les Articles 414, 415 et 416 du Code Pénal: Coalitions*). This modification of the law was preceded by a Commission of Inquiry, of which M. Ollivier was the reporter. This report explains the alterations. By these, men are allowed to combine, if they abstain 'from violence, menace, or fraud.' The law will not interfere with 'strikes' or 'lock outs' until they assume a criminal character."

Mr. Wilson has fallen into error in stating that the promoters of combinations could have been imprisoned for from two to five years. He has been, however, misled by Mr. Fane's letter to Lord Stanley of 31st March, 1867. As we explained in treating of the subject of combination in France, the 415th section of the *Code Pénal* provided that a contravention of its provision was punishable with imprisonment from one to three months; but that, by the 416th section, parties who were found to be leaders in combinations were, in addition to the above punishment, subject to the surveillance of the police for a period not less than two and not more than five years. Although there is no doubt that under the old law employers often avoided the consequences of their acts, it is an exaggeration to say that they escaped scot free. By the 414th amended article of the *Code Pénal* transgressors may be imprisoned for any period from six days to three years.

Report by
L. S. Booth.

Mr. L. S. Booth, who is engaged in the ribbon trade of Coventry, says, p. 138—"There subsists a very friendly feeling between the manufacturers and workpeople; this has been attributed to the action of a society called *Conseils des Prud'hommes*, or Society of Prudent Men, formed of various trades of workpeople and masters, to adjust the differences that from time to

time arise. A gentleman, occupying a responsible position in St. Etienne, assured us it was the best institution in France, and had the confidence of all parties. It does not interfere with the price of labour or the working of contracts, but it enforces integrity in the fulfilment of contracts. It is a Council of Conciliation legally established, and all its decisions of not more than two hundred francs are binding upon both parties; and though it often deals in matters involving a greater sum than this, appeals against those decisions are very scarce. It originated in the time of Napoleon I., in the year 1806." Mr. Booth is not strictly correct in these statements, as to which we refer to our first chapter.

TESTIMONY
OF BRITISH
ARTIZANS.

Mr. C. Bartlett, plasterer, says, p. 208—"One institution in Paris must on no account be omitted, for it is of great importance in these times of strikes, lock outs, and turn outs. The institution referred to is the Council of Arbitration (*Conseil des Prud'hommes*). There are four districts, divisions, or branches of this association in Paris. One of these branches, from some cause, transacts more business than the other three put together; and no sane man can doubt that these councils do a great deal towards preventing strikes. Still, your reporter found the workmen in the building trade in Paris in a rather unsettled frame of mind. When asked if they did not feel grateful for the efforts made by the Emperor for their benefit, and did they not like him very much? was he very popular among working-men? the answer was, 'Not so much as he deserves; he means well, but is surrounded by those who mislead him, and then they act for their own benefit, and to the injury of us.' The Emperor is led to believe that the working man derives greater benefit from his labour than is in fact the case."

Report by
C. Bartlett.

The cause of one of the courts doing more business than the others is, of course, because there is more business to transact in the special industry or industries over which it presides.

Messrs. T. W. Hughes and John T. Prior, carpenters and joiners, state under the head "Trade Combinations, p. 215—"Associations of workmen for the purpose of obtaining an increase of wages, or reduction of working hours (societies of resistance, as they are called), are but of recent origin in Paris. The law formerly most rigorously prohibited anything like a combination among workmen, which was considered a misdemeanor, and its

Reports
by T. W.
Hughes and
John T.
Prior.

TESTIMONY
OF BRITISH
ARTISANS.

promoters were liable to a term of imprisonment not exceeding five years' duration. A combination of employers for the purpose of unjustly reducing the wages was also punishable, but the penalties were far less severe. At that time the workman was entirely at the mercy of his employer, whose statement in a question affecting wages was believed in a court of justice, while that of the workmen was by law held to be worthless. In the year 1829 the law was modified, and the penalties against employers and workmen equalized, but its fundamental principles remained unaltered. At length, however, the government took the question into consideration, and the result was that in 1864 the law was amended, so that combination is now legal except when accompanied with violence, menace, or fraudulent procedure. The joiners of Paris do not seem to have taken advantage of the change in the law, for we could find no traces of a society of resistance among them."

These parties have fallen into the same mistake with regard to the term of imprisonment as Mr. Wilson of Sheffield, making it five years instead of three months. We are not aware of any law having been passed in 1829. At page 216 they state—"Courts of arbitration have been established in France for the settlement of disputed trade questions, and have been found to work exceedingly well. An account of their constitution and powers would perhaps be out of place here, but we may say that we believe that all the advantages which have resulted in France from the *Conseil des Prud'hommes* may also be obtained in England in any district where employers and operatives may agree in the formation of a Council of Conciliation and Arbitration in conformity with the provisions of Lord St. Leonards' Act."

Report by
Alexander
Kay.

Mr. Alexander Kay, joiner, gives a very elaborate report. He says, p. 238—"The *Conseil des Prud'hommes* was originated and established in 1673, for the settlement of trade disputes, by men elected by the practical tradesmen from among themselves. In the upper court, termed the Chamber of Commerce, they have two large paintings, one representing *La Promulgation de l'Ordonnance de Commerce*, and the other *L'Institution des Juges et des Conseils*."

The mode of procedure adopted by the *Conseil des Prud'hommes*, when a difference of opinion arises between persons following an industrial profession or occupation, is this—the

person who considers himself the injured party proceeds to the Council of Conciliation and reports his supposed wrongs, where he pays threepence. A summons is then issued to the defendant, when both have to make their appearance at the Council of Conciliation. The time allowed is usually a day or two—often there is only one (no more) between the issuing of the summons and the appearance. If the parties do not agree at the Council of Conciliation, which is sometimes the case (although nine cases out of every ten are settled there), the plaintiff pays into court two francs, and they are both summoned to the judgment hall; but they may appear and have their case examined by a councillor at their option. This appearance is not compulsory, but is recommended, and usually takes place the week after, when each is ready to read his statement, frequently on the morning of the day on which the judgment has been pronounced, which is the first Wednesday after the attempt at conciliation.

“When the parties appear in the judgment hall, they find ten members of the *Conseil des Prud’hommes* seated on a raised platform, the president sitting in the centre, when they courteously and with great familiarity hear the statements each have to make. In some cases the matter is so clear and evident that the judges give their verdict without rising, and give the injured party a slip of paper to take to the officer who is appointed to carry the sentence into execution. But the case may require some consideration—the ten judges then rise and retire to the adjoining room; and then they compare the facts of the case and decide on judgment. That judgment may not be final; the one who deems himself the injured party may appeal to the Chamber of Commerce; but before his case is entertained there he must deposit 400 francs to pay the expenses, and the case is often not worth that amount. So the fact is, that before he deposits so large a sum as that he often decides to go no further with the case. Sometimes, in cases between employers and employees (piece work being so much adopted), when the employee presents his bill, the employer may say ‘No.’ The judges do not settle a case like that at first. They send a practical man to examine the work in its different classes at various prices stated in the price book issued by the Prefect of the Seine, and the judgment is given accordingly. There is another tariff book used between employer and employed, but it is not legal. It only costs three

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francs, and the one issued by the Prefect of the Seine costs twelve francs.

"Judgment is enforced in all cases in from ten to thirty days; but there is a curious fact connected with the enforcement of the claims of the judgment, although nevertheless true. The Government will give the convicted party six months' credit of the court expenses; the court pays the witnesses, &c., and if the defaulter is not able to pay the costs at once, will take it in weekly or monthly payments, and the officer appointed for that purpose looks after it, and sees that it is paid, and if he is put to any trouble adds to the cost.

"There is another question, or rather a fact, of great importance which has a very beneficial effect upon trade in general. They punish a fraudulent trader with that rigour which always prevents him from a repetition of his crime. If he is found to use unjust weights or measures he is fined, and has to affix in some prominent part of his premises a placard for the space of twelve months, mentioning what he was fined for, and the date. They acknowledge a failure—that is, like a British compromise—but not a bankruptcy; once a bankrupt, he is not allowed to enter into business again on his own account."

Observations on
report by
Mr. Kay.

Mr. Kay has fallen into some errors, which it may be well to point out.

1. The Court of *Prud'hommes* is of a date more ancient than 1673, as will be found on referring to the first chapter.

2. The Chamber of Commerce is not the upper court of the Council of *Prud'hommes*, but a special and separate court itself.

3. It is not necessary to deposit 400 francs before an appeal can be taken to the Tribunal of Commerce. By the 14th article of the Law of 1st June, 1853, the judgments of the *Prud'hommes* are declared to be final in the case where the demand does not exceed 200 francs; above that sum there is an appeal to the Chamber of Commerce. Where the demand is above 200 francs the court can order immediate execution of the same to the extent of 200 francs, without the party in whose favour it is being called upon to find security where there is an appeal against the judgment, but "*pour le surplus l'exécution provisoire ne peut être ordonnée qu'à la charge de fournir caution*"—that is to say, the party obtaining a decree to be put immediately in force for a sum exceeding 200 francs, must find caution or security

for the surplus in case of appeal to the Tribunal of Commerce. It is this provision which Mr. Kay has probably confounded with the matter of appeal. By the 471st article of the *Code de Procédure Civile*, the appellant who is unsuccessful in his appeal is subject only to an amand or fine of five francs if the judgment is that of a justice of peace, and of ten francs if it is that of a Tribunal of First Instance or of Commerce.

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4. With regard to bankruptcy, although it is foreign to the present subject, it may be as well to correct the broad statement made by Mr. Kay. No merchant in France who has failed can appear upon the bourse until he is what is called rehabilitated, "*Nul commerçant failli ne pourra se présenter à la bourse à moins qu'il n'ait obtenu sa rehabilitation*" (a), but every bankrupt, except those guilty of fraud and other offences, may be rehabilitated in the manner pointed out by the *Code de Commerce*.

Mr. George Broughton Forbes and Mr. John M'Ewan were sent as representatives of the masons. They note, p. 246—"The masons here do not object to work along with men who do not belong to their society. We do not hear of any strikes having been with the masons. All the differences that may arise between masters and men are settled by the Court of Arbitration. This court is composed of an equal number of masters and men. They all bow to the decision of the court."

Report by
George
Broughton
Forbes and
J. M'Ewan.

William Elliott, a die sinker, states in his report, p. 341—"There is no trades union amongst die sinkers, neither in France nor England, but I wish to say a word in reference to trades unions, viz., that the system of the *Conseils des Prud'hommes* appears admirably adapted to settle trade disputes, offering to my mind the best solution of trade difficulties. Government and trades unions would do well to consider the system as practised in France. Trades unions might employ their funds with great advantage for benevolent purposes in connection with their own particular trade. By adopting the *Conseil des Prud'hommes* they would prevent those fearful strikes and wasting of funds; indeed, by adopting the system of *Prud'hommes* trades unions would become, as it were, an assurance society for the benefit of each trade."

Report by
William
Elliott.

Robert Coningsby, who gave in a special report upon the "Condition and Habits of the French Working Classes," says,

(a) *Code de Commerce*, art. 612.

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Report by
Robert
Coningsby.

p. 45—"The *Prud'hommes* system only applies to the cases of individual disputes between masters and workmen. If more than one man has a grievance he is not allowed to say, 'We require such and such alterations,' but 'I wish for so and so.' This makes it a less useful tribunal than the one which has recently become law in England is likely to be. In Nottingham and the surrounding district these Courts of Arbitration and Conciliation have been tried and found to work well during the last seven years."

Other instances might be given from the reports of these intelligent artizans, who, although mistaken, as was naturally to be expected, in some particulars, all agree upon the utility and desirability of Courts of Arbitration and Conciliation being established in this country. A new era is dawning upon the British workman. By the Reform Bills now passing through Parliament he will be invested with a power and influence which he never before possessed. It would be well, therefore, that he should gird up his loins and prepare to fulfil the duties which will be expected of him in this new relationship to the state. He must inform himself not merely to the extent which primary and technical education and mechanics' institutes may lead him. He must give a patient and attentive consideration to the laws of his country, to its constitutional history, and to its relations with other nations, so as to be a helper in the great work of advancing our national prosperity. The new power which he will doubtless possess must not be used as a destructive power. "'Tis good to have a giant's strength, but not to use it as a giant." Class feelings and class prejudices must be forgotten, and masters and workmen must work harmoniously together, or together refer their differences to the fair and judicious arbitration of others, with that manly and generous confidence which becomes Britons, instead of repeating in maturer years the silly experiments of schoolboy "barrings-out." Let the funds of trades unions be applied to charitable purposes—to organize associations for building workmen's houses—to provide sea-coast residences—to establish co-operative societies for joint labour, or co-operative stores—to anything, in short, but supplying the sinews of an inglorious war against employers, which has idleness, debauchery, and misery as its direct and necessary results. Let the masters remember, to regret it, that their fathers and grand-

fathers have done great and cruel wrong to the working classes, with and without the aid of Acts of Parliament which their influence caused the unscrupulous lawmakers of a bygone age to pass without hesitation. But let the workmen remember these things only to forgive them. Let them not attribute the iniquities of the fathers to their children. The days of embezzlement Acts and combination laws are numbered, and so, it is to be hoped, are those of the social and political crimes and follies of the working man.

In these chapters we have endeavoured to show the legal relations between masters and workmen without fear and without favour. Although we have certainly sympathized with the condition of the working man under the oppressive, grinding, and penal provisions of former days, as every man of generous feeling must do who studies the subject in its details, we have never attempted to justify his acts of retaliation or revenge. On the contrary, we believe that no small share of the unhappy state of matters which has hitherto prevailed is due to the workmen themselves; but we would fain hope that when both parties have made up their minds to forget bygones, and when they come to know each other better, an entirely different state of relationship will be the result. Every workman cannot hope to become a master. There are many masters who would wish that they could again become workmen. "Those who have made the change from workmen to employers," says a writer in one of our reviews, "will not all speak of it with rapture. They have found, many of them, that they would have done better to bear the ills they had than fly to others that they knew not of. Many a time they have looked back with lurking regret at the days when they drew their weekly wages and supplied the wants of their families as regularly and with as little anxiety as the sheep in the meadow or the cattle in the field supply the wants of themselves and their offspring. It was a new and very bitter experience of life they entered on when they grappled with the anxieties of business. Never to know exactly how they stood; to be for ever muddling with bills and credits; perplexed about markets, worried with bad debts, crushed by a losing contract, haunted by the apparition of bankruptcy, to lose their sleep by night and their appetite by day, to have their very home life embittered by cares and forebodings, and to find in the very

sanctuary of God, where they used to enjoy such calm heavenly communion, ten thousand worldly thoughts ever ready to rush in and chill all divine and blessed experiences—all this gave them a new light upon the pleasures of employers. All men are not fit for the position: they have not education enough, brains enough, nerve enough, quickness and sagacity enough, patience and application enough, to sustain its burdens. It should be remembered that a position that demands so much in order that its responsibilities may be satisfactorily met, must have, on the whole, a higher remuneration. Workmen should make up their minds to see employers living in a scale of comfort and elegance considerably above their own. If it were not so, there would be soon no employers whatever, no large contracts, no large works. Society would return to a primitive condition, and there could be no more contests about sharing wealth, for the simple reason that there would no more be any wealth to be shared."

The author has now brought these chapters to a close. They would have been written differently had they been merely intended for lawyers, and he may not therefore be entitled to feel himself in the position of one who is conscious of having discharged the obligation which it is said every man owes to his profession; yet even to the professional man the gathering together of the scattered Acts concerning industrial legislation in the form in which they are here presented, accompanied as they are with references to decided cases, will not be without its use. If, however, what has been written should have the effect of enabling masters and workmen to understand the laws by which their relations to each other are now regulated, and of furnishing them with the means of establishing Councils of Conciliation and Arbitration for settling their disputes like reasonable men, in the long, and it is to be hoped happier, future which is now before them, the aim of the author will have been amply fulfilled.

APPENDIX.

APPENDIX.

ADDRESS OF LORD MEDWYN TO THE SHERIFFS AT THE CLOSE OF THE CIRCUIT AT GLASGOW IN JANUARY, 1888, AND REPLY BY SHERIFF ALISON, IN CONNECTION WITH THE CELEBRATED STRIKE OF THE COTTON-SPINNERS (a).

THE clerk having called the sheriff of Lanarkshire, the sheriff of Renfrewshire, and the sheriff of Dumbartonshire, and on any person who had complaints or informations to exhibit against them, for malversation of their office, to appear. After a moment's silence,

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LORD MEDWYN addressed the sheriffs and magistrates nearly to the following effect:—I do not think that we need wait longer in expectation of complaints being made against you in the execution of the duties of your office. All of you have been too long known to this place, and to the court as sheriffs, and have so repeatedly earned and maintained the good opinion of the court for the manner in which you have discharged your duties, that seldom is there an occasion on which there are any grounds of complaint. We have had, on this occasion, few cases of a very serious nature from any of the counties. From the county of Renfrew, in particular, the number has been very small; and I congratulate the sheriff of that county, in which manufacturing districts are so extensive, on there being so very few cases, and these comparatively trifling in their nature. Indeed, with regard to the cases from all the counties, I may remark, except one in which the diet has been deserted, that there has not been many of great atrocity; and, let me add, one melancholy instance of a

(a) The judges who tried this celebrated case were the Lord Justice Clerk (Boyle), and Lords Mackenzie, Moncrieff, and Cockburn. The Crown counsel were Lord Advocate Murray, Solicitor-General Rutherford, both afterwards on the bench, Shaw Stewart, and Handyside, afterwards Lord Handyside. The counsel for the

prisoners were Patrick Robertson, afterwards Lord Robertson, Duncan M'Neill, now Lord Colonsay, Alexander M'Neill, James Anderson, now a Queen's Counsel at the English Bar, and Henry Glassford Bell, sheriff of Lanarkshire. Of all these the only parties now alive are Lord Colonsay, Sheriff Bell, and Mr. Anderson.

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breach of the law arising out of combinations. I willingly embrace the opportunity given to me by the observance of this ancient form of calling up the sheriffs of the district—more suited certainly to the times in which it was introduced than to our present judicial system, under that most valuable institution, of which our country may proudly boast, our local courts presided over by our sheriffs—I say I willingly embrace this opportunity, in a more particular manner to express the opinion of the court that the gratitude of the community is most justly due to you, the sheriff of this county, for the important services you have so recently performed in the detection of that secret and most mischievous association of the cotton-spinners in this place, which has been engaging the attention of the court in Edinburgh for so many days, and of the effects of which we too have here had a specimen in one of the cases before this court—the case of Riddle. That you were ably and efficiently seconded by the official authorities in this place, under your direction and superintendence, is true; the most efficient and anxious aid was given to you all along by the zealous co-operation of Mr. Salmond, which might have been expected from him; and the evidence adduced in Edinburgh showed at every turn how well Captain Miller, in his department, in the apprehension of these most dangerous midnight conspirators, had assisted you—and I congratulate this city on having secured the services of so able and active a public officer in the most responsible situation of superintendent of police. But my duty especially calls me to notice the intelligence and active exertions used by you in discovering proofs of the guilt of this association, tracing its history, and expiscating the most strange details of their proceedings, even, I am persuaded, at great personal risk to yourself, which your zeal in the public service, and the great duty of bringing these guilty men to punishment, led you to despise; and under every difficulty, from the secrecy of their proceedings, you were enabled so to prepare the case for trial, that punishment has overtaken several of the ringleaders. Your conduct on the occasion is beyond my praise; and I trust that the disclosures which have been made on the trial will lead to far higher consequences than any punishment which could overtake the prisoners who have been convicted. I think I may express a hope, as not unsuitable to the duty I am called upon to perform, that the plans and measures of this combination, and the reckless and criminal disregard of human life and human comfort by which they were to be accomplished, may have the effect of leading to an inquiry to ascertain whether the object has been attained of benefiting the operatives, and bettering their condition, by the alteration which was made some years ago on the combination laws. What was the ground of this alteration? It was to enable them to obtain the due marketable value of their labour, unaffected by

any measures adopted by their masters to depress their wages. For it may be doubted, perhaps, whether, by beginning to consider combination as an offence only after it has been matured and in active and offensive operation, opportunity has not been afforded for methodizing an association to oppress and tyrannize over those workmen who were perfectly satisfied with the wages offered to them—for which they were working contentedly and thankfully—compelling them by threats of personal violence, even of the most brutal description, to leave their work and betake themselves to the miserable refuge of being idle pensioners of the association for the maintenance of themselves and their families. This system of oppression, which deprives the poor man of the power of using his most valuable property, his physical strength, in lawful industry, is just as injurious to his comfort and independence as if it had proceeded from the power of the throne or the bench of justice. That the tyranny and oppression proceeds from a self-constituted body, emanating from themselves, is not the less prejudicial to them, and equally calls for the interference of the law to protect the peaceable and well-disposed persons—operatives who are willing to accept of the wages offered for their labour. The folly of the conduct of those who stand off, and compel others to do so, is only equal to its illegality and wickedness. Others will be found to supply their place; the ingenuity of art and the powers of science may be exerted to supply a substitute for human labour; and they may find, to their cost, that their services can be dispensed with. But, alas! the consequences do not stop here. The mischiefs which always result from idleness in that class of society, are fearfully exhibited in the records of this and other courts of justice in this place; perfect idleness leads to its almost necessary accompaniment, the indulgence to excess in intoxication to relieve the tedium of a vacant mind; and intoxication leads to the commission of a vast proportion of the crimes, the violent more especially, which people our jails and bridewells throughout the country, and spread moral ruin over our land. But others suffer besides the immediate members of the association, and the forced and unwilling victims compelled to give up work. For how many young women and children, whose occupation is cut off by a strike, are thus deprived of their means of livelihood, and driven, I fear, too often to a life of wretchedness and sin, alike ruinous to their moral character and personal comfort. How wide-spread this mischief is, I need not say. And can it be with certainty affirmed that fever, generally to a certain degree prevailing amid the dense population of a great city, acting on the impoverished and dissipated portion of the inhabitants of this place, may not have been aggravated to such a degree as to produce the prevalence of disease which I understand exists here to a painful extent? These circumstances, I hope, may invite attention to the state of the law of combina-

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has been attained, which was rather to influence the moral feelings of mankind by the display of the atrocities by which the conspiracy has been stained, and to which it so readily leads, than to terrify them by the punishment which might be inflicted: and, however deep may be the guilt of the convicted prisoners, no one rejoices more sincerely than myself that it has been found possible by the court, in awarding sentence, to temper justice with mercy. I trust to the memorable trial which has just concluded at Edinburgh, to induce the working classes of this great city to pause on the threshold of a career which they see leads, by so easy a transition, to such frightful crimes; but I trust still more to the eloquent and emphatic words which your Lordships have addressed to the conspirators tried at this circuit, and through them to the whole working millions of the empire, and which, speaking to the understanding through the heart, must win their way now into the most unwilling breasts, by the simplicity and justice of the sentiments which they convey. My Lords, opposed as we were in the whole progress of this investigation by the constant efforts of a section of the people, who almost made a public question of the case, we must have proved unsuccessful in our efforts to bring the guilty to justice if we had not been directed and seconded by the firmness, talent, and zeal of the Queen's counsel, to whom I feel myself bound to make this public acknowledgment, and to whose abilities and exertions I mainly ascribe the successful issue of the trial. It may seem superfluous, after what your Lordship has said, for me to notice the aid by which I have been supported in this place; but I cannot pass over in silence the indefatigable perseverance, unflinching resolution, and unwearied zeal of my friend Mr. Salmond, or the cool determination and skilful efforts of his able assistant Mr. Nish, by whom the threads of this conspiracy have been so clearly traced. I have equal pleasure in bearing this public testimony to the intrepidity and admirable professional skill with which I was assisted by Captain Miller, the head of the Glasgow police, in the most critical moment of our public duty. It is no small satisfaction to me to reflect that this great contest of justice with violence has been conducted from the first to last without one soldier being called upon to act, or one drop of blood being shed in defence of the majesty of the law; and that so admirable were the arrangements of the police, that the conspirators were detected and arrested, and all their papers seized, without one blow being struck, or one voice elevated in the contest. My Lords, when I recollect Captain Miller's conduct when he entered the committee room of the conspirators, and reflect on the moment when I stood beside him in the middle of the apartment as he beckoned them out one by one till the whole fifteen were delivered over to the police on the outside, with as calm a manner and resolute a voice as if he were now

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discharging his ordinary duty in this court; and when I call to mind the character and proved deeds of the conspiracy, and recollect that every room in the house was then crowded with conspirators, and that hundreds of the association thronged the streets, almost within call—I cannot but regard his conduct on the occasion as one of the most remarkable instances on record of that moral resolution which is alike the shield of innocence and the bridle of crime, and which, paralyzing guilt by the ascendancy of courage, proves its own safeguard by the awe which it inspires. The strike from which the frightful series of crimes which has so long engaged the attention of the court at Edinburgh arose, has since come to a close; but the disastrous effects which it has produced will not so easily be repaired, and they have fixed a dark and ineffaceable stain upon the moral character of the people of this country. My Lords, the ruinous consequences of the strike upon the industry and prosperity of the manufacturing classes is already frightfully apparent. The return of the commitments for the county of Lanark, which I have just completed for the Home Office, exhibits a melancholy increase of crime during the last year, and which will forcibly attract the attention of the legislature. At the Christmas jail delivery last year only *seven* prisoners remained in custody for trial in this city; by the schedule I hold in my hand there are at this moment *sixty-eight*, almost all committed during the last two months! Nor is this result surprising. During the disastrous strikes of last summer twenty or thirty thousand young persons of both sexes were thrown idle for many months in this city and its immediate neighbourhood, almost all accustomed to high wages, and too often to habitual intemperance. Nine and twenty thousand persons in Glasgow are directly or indirectly employed in the manufacture of cotton goods, the great majority of whom were thrown idle by the spinners' strike; and this calamitous event took place at a period of unexampled distress from the general commercial embarrassments of the country, and hardly any means of absorbing the helpless multitudes in other trades existed. For the skilled workmen who arranged these strikes, the cotton-spinners, iron-moulders, colliers, and sawyers funds were provided from the resources of the associations to which they severally belonged; but for the unhappy persons whom they employed in their labour, the piecers, pickers, drawers, &c., no provision whatever existed; and they were thrown in vast and appalling numbers, far beyond the reach of either public or private charity, on the streets or into public houses to coil away the weary hours of compulsory idleness. The results may easily be anticipated. The wretched victims of this tyranny all got deeply into debt, if they had any credit; and if they had none, sunk into such habits of idleness, profligacy, and intemperance, that great numbers of them have been permanently

rendered mere nuisances and burdens to society. The cotton-spinners' strike alone instantly threw six or seven thousand women and children out of employment for a long period: eight thousand human beings were retained in a state of destitution and wretchedness for four months merely at the pleasure of fifteen men! Numbers of the persons thus directly or indirectly reduced to idleness have already been tried for various offences at this circuit; still more await their trial at the next. Often they openly ascribe in their declarations the origin of their crimes to the idleness, drunkenness, and suffering consequent on the strikes of the trade to which they belonged, or on which they depend. And what must be the confusion of moral idea—the utter abandonment of religious principle—which could lead eight or nine hundred men to acquiesce in, and likewise impatiently to expect the fruits of, a known and organized system of conflagration and violence? Nor have the effects of this unhappy and unnatural system upon society been less disastrous.

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The cotton-spinners' strike cost the persons who were employed in that trade, spinners, piecers, and others, above £50,000; the loss to the masters was at least as great; that to the persons whom they employed or dealt with for provisions or other articles probably still greater. Two hundred thousand pounds were lost to Glasgow and its vicinity in four months, without a shilling being gained by any human being, by the strike of this trade alone! The total loss sustained by Lanarkshire, between the strikes of the colliers, the iron-moulders, sawyers, and spinners, last year was at least £500,000. Society cannot long go on under a repetition of such shocks; capital will migrate from the country where it is subject to such calamities. And what is most remarkable, these grievous blows were inflicted by the working classes on themselves at the very time when commercial credit was reeling under the effects of the convulsion of last year, and the most respectable establishments with difficulty sustained themselves against the accumulated pressure of diminished orders and increased embarrassments. The principle of the operatives has too often been by combination and violence to force up their wages during prosperity, and by combination and violence to prevent them from falling in adversity; hoping thus to avert from themselves the law of nature, and build up on the foundation of intimidation a durable prosperity amidst the fleeting changes of human affairs. And what has been the consequence? Why, that in the insane attempt they have tripled the distress, already sufficiently severe, which the late commercial crisis has brought upon them, and chilled the warmth even of Christian charity by the evident and ruinous addition which their own conduct has made to their sufferings. It is known to my respected friend Mr. Campbell, in the magistracy of this city, whose labours have done so much to distribute to the really

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son.

deserving the great funds raised last winter for the relief of the poor, that for one person who was thrown out of employment by the late commercial crisis, two were reduced to destitution by the voluntary strikes of the workmen during its continuance, proving, thus, that even a monetary crash which convulsed the globe has done less to augment human suffering than that moral earthquake which has spread a pestilential darkness over the manufacturing community, which has rent asunder the bonds by which society is held together, opened a yawning gulf between those classes whose united efforts are required for general prosperity, and armed in deadly hostility even one set of workmen against another. Do the operatives really believe that their interests are in the end at variance with those of their masters, and that they will be permanently benefited by forcing up their wages by murder and fire-raising to an unnatural level? The interests of the master and workman are ever the same, and can never be disjoined: it ever must be the interest of the employer to allure and retain in his service the skilled and experienced servant. Nothing but necessity will ever drive him to new hands. The workmen say they have hitherto kept their wages up by means of combination and violence, and that they would not now be earning 30s. or 40s. a week but for such assistance. Even if this were the case, do they not see that such methods must in the end defeat their own object; and that the only effect which can result from such forced elevation of the price of labour is, that it will cease to find a market for its produce? Already that effect has become conspicuous. Numbers of the cotton manufacturers in this city have constructed mills which dispense with spinners altogether. Others have succeeded by machinery in reducing the numbers required to one-half. By the boasted rise of their wages, by the harassing repetition of their strikes, the cotton-spinners have dug the grave of their own industry. If they soon find themselves thrown out of employment altogether, and machinery entirely supplanting the industry on which they depend, they have none to blame for it but themselves. And if this effect does not take place, what other result do they anticipate? Do they expect by combination and violence permanently to secure both higher wages for their labour than circumstances will admit, and also a durable vent for their produce? Will not the market for our industry be lost if such an effect continues? Will not Prussia, and Russia, and France, receive it with open arms, and readily give it that protection which it has ceased to find in the British Isles? And will not this city be reduced to ruins, and the land of Watt and Arkwright be stript of its fabrics, and despotism in the end reap those fruits which the arms of freedom have sown? Around us, on all sides, the woful effects of these strikes upon the interests of industry are spreading. They tell us, in a voice of thunder, that the worst enemy of the

poor is the combined conspirator. Fever and pestilence are walking in the rear of combination; they find a copious havoc of death in the weakened victims of compulsory idleness. Above three thousand four hundred cases of fever were treated last year in the Royal Infirmary of Glasgow alone. The total cases of that disease were above eight thousand. These numbers, appalling as they are, this year are on the increase. The average mortality of the city, which fifteen years ago was 1 in 40, and four years ago 1 in 29, was last year so high as 1 in 25—a rate of mortality, it is believed, unparalleled in any other European city. All this has taken place during a period, till last year, of unexampled prosperity, when all willing to work had ample employment. I am not surprised at these calamitous results: they have advanced side by side with combined conspiracy. I see in them the effect of the arm of Omnipotence chastising the folly or wickedness of man—the necessary consequences of his own infatuation. Impressed with these ideas, I feel that in striving to bring to light the details of this conspiracy, I have been really the poor man's friend—I have not been maintaining the interest of wealth against poverty, of tyranny against freedom, of capital against industry—I have been supporting the cause of industry against idleness, of innocence against violence, of liberty against oppression. Gratefully acknowledging your lordship's too flattering encomiums, I can arrogate to myself no merit in what I have done—I have merely discharged my duty as all my brethren in the same situation would have done; but I have the satisfaction of thinking it will not be without its reward if it shall be instrumental in opening the eyes of the working classes of this great community to their real interests, and restoring that harmony between them and their employers which infatuation only can seek to break, and the rupture of which mutual suffering must ever accompany.

Address by
Lord Med-
wyn, and
reply by
Sheriff At-
son.

Note.—The foregoing speeches, which are referred to at page 123, were reported by Mr. J. F. Nelson for the *Glasgow Constitutional*, then conducted by himself. Mr. Nelson is now, and has been for many years back, one of the reporting staff of *The Times*, with which he has been long connected. Mr. Nelson was a distinguished

alumnus of Glasgow University. As a reporter he confessedly stands unsurpassed, and as a private individual his quiet, unobtrusive, gentlemanly demeanour has always secured for him an amount of respect and consideration which even his important representative character could hardly increase.

THE following forms are intended to enable masters and workmen to take the necessary steps for forming Boards or Councils of Conciliation and Arbitration, and may be classified as follows:—I. Extra-judicial, II. Judicial.

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JUDICIAL.**

MINUTE.

C. D., Journeyman.
E. F., Apprentice.
&c., &c.

Note.—It is presumed that the trades union secretary will

act as such ; if not, a special Secretary should be appointed after the election of Preses. The minute of the adjourned meeting will be in the same form as the above until it comes to the appointment of Preses, after which it may proceed as follows :—

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THE said reported, that in terms of the instructions given at last Meeting, he, along with the other members of Committee then named, had prepared Rules and Regulations for the consideration of the present Meeting, which he handed to the Secretary, and which were read.

The said Rules and Regulations having been discussed *seriatim*, were, as altered and amended, approved of and authenticated by the Preses, and are as follows :—

[Insert rules].

The following parties were appointed a Committee to confer with the Masters as to the said Rules, and with regard to the formation of a Board of Conciliation and Arbitration, with full power to agree on behalf of the Operatives to such modification of the said Rules as may meet the reasonable views of the Masters, without sacrificing any of the essential rights of the Workmen ; such agreement, however, not to be final until confirmed by a General Meeting of the trade to be called for the purpose.

Note.—It would probably be better to select a committee to whom *full powers* could be given to consult and agree with the masters without any further general meeting, as there is always a risk of some factious and discontented spirit upsetting what may have been successfully done.

The great point is to select men of good sound sense and moderate views. The next thing is to secure the co-operation of some active and liberal minded masters. There are always to be found such men among employers, and, if approached in a proper spirit, their assistance may be reckoned upon as a matter of course. When the masters' delegates are appointed, and assuming both parties to be desirous of coming to fair and reasonable terms, common sense will soon display itself in the adjustment of rules and regulations. Workmen must learn, like other people, to give and take. They cannot expect to get all they want ; and, on the other hand, masters ought always to feel, that in treating with parties so dependent upon them as workmen, they are hardly in the position which, in a moral point of view, entitles them to insist upon exactions as they might possibly be justified in doing with those dealing with them upon perfectly equal and independent terms.

Supposing, then, the result to be that Rules and Regulations have been agreed upon, we subjoin the form of those adopted at Wolverhampton, which have worked very successfully in practice.

RULES FOR REGULATING THE CARPENTERS' AND JOINERS' BRANCH OF THE WOLVERHAMPTON BUILDING TRADE.

Wz, the undersigned, A. B., umpire ; C. D., E. F., and four others, arbitrators, appointed by the master builders ; G. H., I. J., and four others, arbitrators, appointed by the operative carpenters and joiners, having fully and fairly dis-

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cussed certain alterations in the rules proposed on behalf of the masters and men respectively, of which due notice had been given, do hereby certify that we have, by unanimous resolution, agreed upon the following Rules, to come into operation on the first day of May next:—

Rule 1. Arbitration.—That if any trade dispute shall arise between master and workman, such dispute shall be settled by the award of C. D., E. F. and four others, on the part of the master builders, and G. H., I. J., and four others, on the part of the operative carpenters and joiners, who are hereby appointed trade arbitrators, or by a majority of them; or in case they or a majority of them cannot agree, then by the award of A. B., who is hereby appointed umpire; and that in case any or either of the masters' arbitrators shall happen to die, or cease to carry on business in the town of Wolverhampton, or be ill and unable to attend to the business of arbitration during the continuance of these Rules, then the surviving or remaining masters' arbitrators shall appoint another or other master builder or builders then carrying on business in the town of Wolverhampton, in the place of him or them who shall so have died or ceased to carry on business, or become incapable of acting; and in case any or either of the workmen's arbitrators shall happen to die, or cease to work as a carpenter and joiner in the town of Wolverhampton, or become ill and incapable of attending to the business of arbitration during the continuance of these rules, then the surviving or remaining workmen's arbitrators shall appoint other or another carpenter and joiner, then working in the town of Wolverhampton, in the place of him or them who shall have died or ceased to work, or become incapable of acting. And in case either or any of the masters or men appointed arbitrators shall be a party or parties to the dispute to be decided, other arbitrators shall, for the purpose of that arbitration only, be appointed in manner hereinbefore provided for filling up vacancies. That upon any dispute arising, either the master or workman may forthwith give notice to the umpire of the same, who shall thereupon summon the arbitrators to meet at some convenient time and place within seven days, for the purpose of hearing and determining the said dispute. At the meeting so to be held both parties, and such others as the arbitrators or umpire may think necessary, shall be heard; and both parties shall produce before the arbitrators and umpire such documents in their possession relating to the dispute as they or either of them shall require. The award of the said arbitrators, or a majority of them, or in case they or a majority of them cannot agree, then the award of the umpire, shall be binding and conclusive upon all parties to the dispute arbitrated. The award shall be made within three days after the sitting, or if more than one, after the last sitting of the arbitrators. The award shall not be void or voidable for want of form; and may be referred back for amendment in form to the arbitrators or umpire, as the case may be, by any judge or magistrate. No proceedings whatever at law or in equity shall be taken against either arbitrators or umpire, or any of them, for anything done under this rule.

2. Conciliation.—That in case any trade dispute or difference of a private nature shall arise between any individual master and any individual workman or workmen, by which the general interests of the trade are not directly affected, then in such case, before proceeding to arbitration under the last rule, the master shall nominate one of the hereinbefore appointed masters' arbitrators, and the workman or workmen one of the hereinbefore appointed workmen's arbitrators, who shall, as soon as conveniently may be, meet together, and endeavour, if possible, to arrange such private dispute or difference without proceeding to a formal reference; and in case they cannot so arrange such difference to the mutual satisfaction of both contending parties, the matter in dispute shall be determined by arbitration under rule 1, as though no such meeting for conciliation had been held.

3. Society and Non-Society Men.—Neither masters nor men shall interfere with any man on account of his being a society or non-society man. The society men pledge themselves not to annoy, nor allow annoyance to, non-society men.

4. *Masters' Conduct of Business.*—Each master shall have power to conduct his own business in the matter of the employment of any man he thinks fit, on any work he considers him capable of doing; in taking apprentices; in using machinery and implements; and in all details of the management of his business, not infringing on the individual liberty of the workman. Provided that on any job where a number of carpenters and joiners are employed, their instructions shall be given by the employer, or in his absence by the general manager, through the carpenter and joiner appointed to take the lead of the job. EXTRA-JUDICIAL.

5. *Wages, Payment by the Hour.*—All time shall be reckoned and paid for by the hour, at the following rates:—The class of men who have hitherto been paid fivepence three farthings per hour shall be paid sixpence per hour, and other classes of men in proportion; but men working only on unprotected buildings shall be paid one halfpenny per hour additional for six weeks before and six weeks after Christmas Day. Provided that when a man employed on unprotected buildings has the option of making up his full time by working in the shop, he shall be paid at the ordinary rate only, it being the intention of both parties that men of the same class shall have the opportunity of earning the same wages in each week.

6. *Time of Work.*—The shops and works shall be open from six o'clock in the morning till half-past five o'clock in the evening for the first five working days in the week; and from six o'clock in the morning till four in the afternoon on Saturday, allowing one and a half hour per day for meals; but from six weeks before till six weeks after Christmas Day, workmen on unprotected buildings, who are not provided with work in the shop to fill up their full time, shall work from seven o'clock in the morning till five o'clock in the evening, on the first five working days of the week, and from seven o'clock in the morning till four o'clock in the afternoon on Saturday, with one hour per day allowed for meals. Provided that for men who wish to be paid at the office on Saturday, between one and two o'clock, under the next rule, the hour of ceasing to work on that day shall be one o'clock instead of four.

7. *Reckoning and Payment.*—Time and wages shall be reckoned up to Friday night in each week, and wages shall be paid at the pay office at the shop, on Saturday, between the hours of one and two, to all men who require a half holiday; the men requiring payment then to walk to the pay office in their own time. Other men will be paid either at the pay office at the shop, or upon the job, at four o'clock as heretofore.

8. *Overtime.*—All time made at the request of the master between eight o'clock in the evening and five o'clock in the morning, shall be paid for at the rate of ninepence per hour, and on Sunday shall be paid for at one shilling per hour.

9. *Distant Work.*—Walking time shall be paid as follows:—that is to say, if the distance of the work or job be within two miles from the High Green, Wolverhampton, the men shall walk in their own time. If more than two miles from that place, then walking time shall be allowed at the rate of three miles per hour beyond the first mile and a half. The men to walk back in their own time, except on Saturdays, when the wages are not paid on the job or place of work. Lodgings to be paid for at all jobs beyond four miles distance, at the rate of two shillings per week. Railway fares shall be matters of special arrangement between master and man.

10. *Notice.*—One working day's notice shall be given before a man leaves an employer, or before a master discharges a man.

11. *Rules, How Long in Force, and How and When to be Altered.*—These Rules shall come into operation on the 1st day of May next, and shall continue in force for one year. Should either party require an alteration in these Rules at the end of the time specified, notice shall be given to the other party of such required alteration in the month of January next. If no such notice shall be given, then these Rules shall continue in force until the 1st of May in the next year, and so on from year to year, until either party shall give notice to the other in the

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month of January in any year, that an alteration in these Rules will be required on the 1st day of May next following such notice.

12. *Printing, Publishing, and Proving these Rules.*—That these rules shall be printed and posted up in some conspicuous place in each of the master builders' workshops in Wolverhampton; and that a printed copy of these rules, issued by the umpire, shall be read as evidence of the contract and submission to arbitration, between any master builder carrying on business in the municipal borough of Wolverhampton and any carpenter and joiner, in any proceeding to enforce any award made under these Rules, unless a special contract in writing shall have been entered into between the parties.

Dated this thirty-first day of March, 1866.

[*Signatures of Masters' Arbitrators.*]
[*Signatures of Men's Arbitrators.*]
[*Signature of Umpire.*]

The following are the Rules which have been adopted and acted upon so successfully in Nottingham:—

RULES OF THE BOARD OF ARBITRATION AND CONCILIATION OF THE HOSIERY AND GLOVE TRADE, NOTTINGHAM.

"1.—That a Board of Trade be formed, to be styled the 'Board of Arbitration and Conciliation for the Hosiery and Glove branches.'

"2.—That the object of the said board shall be to arbitrate on any questions relating to wages that may be referred to it from time to time by the employers or operatives, and by conciliatory means to interpose its influence to put an end to any disputes that may arise.

"3.—The board to consist of nine manufacturers and nine operatives, the operatives to be elected by a meeting of the respective branches. The manufacturers to be elected by a public meeting of their own body. The whole of the deputies to serve for one year and to be eligible for re-election. The new council to be elected in the month of January in each year.

"4.—That each delegate attend the board with full powers from his own branch, and that the decision of the board shall be considered binding upon the branch he represents.

"5.—That a committee of inquiry, consisting of four members of the board, shall inquire into any cases referred to it by the secretaries, such committee to use its influence in the settlement of disputes. If unable amicably to adjust the business referred to it, it shall be remitted to the board for settlement; but in no case shall the committee make any award. The committee to be appointed annually.

"6.—That the board shall at its annual meeting elect a president, vice-president, and two secretaries, who shall continue in office one year, and be eligible for re-election.

"7.—That the board shall meet for the transaction of business once a quarter, viz., the first Monday in January, April, July, and October, but on a requisition to the president, signed by three members of the board, specifying the nature of the business to be transacted, he shall within seven days convene a meeting of its members; the circular calling such meeting shall specify the nature of the business for consideration, provided that such business has first been submitted to the committee of inquiry, and left undecided by them.

"8.—That all complaints submitted to the board for their investigation be embodied in writing, stating as clearly as possible the nature of the grievance complained of, such statement to be sent at least one week prior to the board meeting.

"9.—That the president shall preside over the meetings of the board, and in his absence the vice-president. In the absence of both president and vice-presi-

dent, a chairman shall be elected by the majority present, the chairman to have a EXTRA-
JUDICIAL. vote, and in case of numbers being equal, the chairman to have the casting vote.

"10.—That any expenses incurred by this board be borne equally by the operatives and employers.

"11.—That no alteration or addition be made to these rules except at a quarterly meeting, or a special meeting convened for the purpose. Notice of any proposed alteration shall be given in writing one month previous to such meetings."

II. JUDICIAL.

The forms under this branch may be divided into two :—

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I. Those under the Arbitration Act of 1824.

II. Those under the Councils of Conciliation Act, 1867.

I. With regard to the first, all that requires to be done to bring the Trade Rules which may have been agreed upon under the Arbitration Act of 1824, is to add to them the following clause after clause 12 of the above rules used at Wolverhampton.

AND, LASTLY, that the Arbitrations hereinbefore provided are intended between Masters and Workmen to be, and for all intents and purposes shall be taken and held to be, under the provisions of section 13 of the Act 5 Geo. IV. c. 96.

II. Under the Councils of Conciliation Act, 1867.

Assuming that the masters and workmen have agreed to form a Board of Conciliation under this Act, and have held a preliminary meeting for that purpose, the first thing to be done is to fix upon the number of the council, which by the second section is to consist of not less than two and not more than ten masters and workmen, and a chairman. The next thing to be arranged is as to the manner in which the expenses of the council and of the registry are to be provided for. These matters being settled, a petition to the Queen will require to be prepared and forwarded to the Secretary of State, which may be in the following form :—

TO HER MOST GRACIOUS MAJESTY THE QUEEN,
The HUMBLE PETITION of

[Here will follow the names and designations of the Petitioners.]

We humbly beg to approach your Majesty with the assurance of our sincere and loyal attachment to your Majesty's person and throne.

We humbly beg to represent to your Majesty that an Act was passed in the Parliament of the thirtieth and thirty-first years of your Majesty's reign, chapter 105, intituled "An Act to establish Equitable Councils of Conciliation to adjust differences between Masters and Workmen," and which received the assent of your Majesty upon the 15th day of August, 1867, of which Act the following is the preamble:—"Whereas an Act was passed in the fifth year of the reign of King George IV., intituled 'An Act to consolidate and amend the Laws relative to Arbitration and Disputes between Masters and Workmen,' and another Act was passed in the first year of her present Majesty Queen Victoria, chapter 67, and another Act was passed in the eighth and ninth years of the reign of her present Majesty, chapter 77, and another Act was passed in the eighth and ninth year of the reign of her present Majesty, chapter 128, and the three last mentioned Acts were passed to amend the said first recited Act."

We humbly beg further to represent to your Majesty that it is provided, *inter*

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alía, by section first of the said Act of the thirtieth and thirty-first years of your Majesty's reign, that "if any number of masters and workmen, in any particular trade or trades, occupation, or employment, being inhabitant householders, or part occupiers of any house, warehouse, country house, or other property within any city, borough, town, stewartry, riding, division, barony, liberty, or other place, and who being a master in such trade, shall have resided and carried on the same within any such place for six calendar months previous to the signing of such Petition, and being a workman, shall have resided for a like period within any such place, and shall have worked at his trade or calling for seven years previous to the signing of such Petition, shall, at a meeting specially convened for this purpose, agree to form a Council of Conciliation and Arbitration, and shall jointly petition her Majesty to grant them a license to form such Council, to hold, have, and exercise all the powers granted to arbitrators and referees under the before recited Acts, and in such Petition for the same shall set forth the rules of the Council, and also the names, occupation, and residence of the petitioners, and the manner in which the expenses of the said Council, and of the Registry hereinafter directed, are to be provided for, it shall then be lawful for her Majesty, or her Majesty's principal Secretary of State for the Home Department, to grant such license, provided notice of such Petition has been published one month before the application for such license in the *London Gazette*, and in one or more of the local newspapers of the place whence such petition emanates."

We humbly beg further to represent to your Majesty that, both as masters and workmen, we fulfil the conditions under which it would be competent for the parties mentioned in the said Act to take the steps necessary for applying for the license therein referred to; and that, at a meeting held at
upon the _____ day of _____, eighteen hundred and _____, specially convened for the purpose, it was agreed by us to form a Council of Conciliation and Arbitration in connection with the
trade in the _____ of _____, the number of which
Council should be _____; and that it was also agreed to provide
for the expenses of the said Council, and of the Registry referred to in the said Act, as follows

[Here state how the expenses are to be provided for].

We humbly beg further to represent to your Majesty that notice of this Petition has been given as directed by the Act, in the *London Gazette*, and _____, one of the local newspapers, accompanying this Petition, being Nos. _____ and _____ thereof respectively, and that we now jointly petition your Majesty to grant us a license to form such Council, in terms of said Acts.

And we humbly pray that it may please your Majesty to grant us a license to form such Council, to hold, have, and exercise all the powers granted to arbitrators and referees under the before-recited Acts.

Signed by me _____, as authorized by
the said Petitioners, at a meeting held at _____
upon the _____ day of _____
eighteen hundred and _____.
(Signed) A. B.

N.B.—In the present case all the parties should sign the Petition. Although it is usual to receive such Petitions signed by one or more individuals on behalf of others, this is ordinarily done in the case of incorporations and public bodies using a common seal. By section 3 of the Act it is the persons whose names, &c., are attached to the Petition, who appoint the first Council of Conciliation.

FORM OF GAZETTE NOTICE.

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NOTICE is hereby given, in terms of the first section of the Act 30 & 31 Vict. c. 105, intituled "An Act to establish Equitable Councils of Conciliation to adjust differences between Masters and Workmen," that at a meeting specially convened for the purpose, held at _____, and within the _____ there, upon the _____ day of _____ eighteen hundred and _____, it was agreed that an application should be made after the lapse of one month from this date to Her Most Gracious Majesty the Queen, by the parties after mentioned, for a license to form a Council of Conciliation and Arbitration in connection with the _____ trade in the _____ of _____, to hold, have, and exercise all the powers granted to arbitrators and referees under the statutes mentioned in the said Act, and that the following are the names, occupations, and residences of the parties who intend jointly to petition Her Majesty to that effect.

[Here insert these particulars.]

Signed in name and by authority of the said meeting,

A. B., Preses.

[Place and date.]

The preceding forms will enable masters and workmen to bring their proceedings up to the point at which it will be necessary for them to appoint a clerk, in terms of the Act, who will, of course, direct the subsequent steps of procedure. In case, however, it should at any time be necessary to apply by petition to the House of Lords, or the House of Commons, the following forms will be found useful :—

FORM OF PETITION TO THE HOUSE OF LORDS.

To the RIGHT HONOURABLE THE LORDS SPIRITUAL AND TEMPORAL, in Parliament assembled :—

The Humble PETITION of

[Give names and designations.]

SH EWETH,—

That

[Here give a statement of the facts.]

Your petitioners, therefore, humbly pray that

[State what is prayed for.]

And your petitioners will ever pray.

Signed in name and by authority of

A. B. ,

FORM OF PETITION TO THE HOUSE OF COMMONS.

Unto the HONOURABLE THE COMMONS OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND, in Parliament assembled :—

The Humble PETITION of

[Give names and designations.]

SH EWETH,—

That

[Here give a statement of the facts.]

Your petitioners, therefore, humbly pray that

[State what is prayed for.]

And your petitioners will ever pray.

Signed in name and behalf of

A. B. ,

JUDICIAL.

The subjoined form of Agreement between a Master and a Workman may be written or printed after the Trade Rules, both being signed by the parties: such agreements are exempt from stamp duty.

FORM OF AGREEMENT BETWEEN A MASTER AND A WORKMAN.

I, A. B., master in , agree to employ C. D.,
journeyman presently in , and I, the said C. D.,
agree to serve the said A. B. as a journeyman , foresaid, upon the
terms of the foregoing Trade Rules, signed by us of even date herewith.

Dated this day of 18
(Signed) A. B.
C. D.

, witness.
, witness.

N.B.—Witnesses are not absolutely necessary when the parties can write, but where they cannot, and have to sign by mark, it is advisable that the person who reads over the rules should sign as a witness to the subscription by mark along with another.

In Scotland the following clause, called a testing clause, can be added after the word "herewith":—

"In witness whereof we have subscribed the said Rules, and this Agreement, consisting of this and the preceding page , written, in so far as not printed, by (*Give full name and designation*), at upon the day of , eighteen hundred and years, before these witnesses.

(*Here will follow the names of two male witnesses above fourteen years of age, and their designations*).

(Signed) A. B.
C. D.

, witness.
, witness.

N.B.—This form applies to the case where both parties sign at the same time, in presence of each other and of the same witnesses. If this does not happen to be the case, then, after the name of the writer of the agreement, as in the above form, add—"as follows, viz., by me the said A. B. at" (*giving the name of the place, and the date, and the names and designations of the witnesses as before*) "and by me the said C. D., at" (*giving the place, and date, and the names, and designations also as before*).

REPORT OF THE NOTTINGHAM BOARD OF ARBITRATION AND CONCILIATION FOR THE YEAR 1866.

It affords the Board much pleasure to report that the past year has been, on the whole, a prosperous one in the hosiery trade, employment in nearly all branches having been abundant.

The Board has met eight times during the year for general and special business. The Committee of Inquiry has also met on several occasions, and all matters in dispute which have been submitted to it have been speedily and amicably arranged.

The Board having now had six years' experience of the practical working of the system of arbitration, as opposed to strikes and lock outs, is thoroughly convinced that in a free country, where workmen and capitalists have a perfect right to enter into combinations, the simplest, most humane, and rational method of settling all disputes betwixt employer and employed is arbitration and conciliation.

The Board is strengthened in this conviction by the fact that during the past two years the demand for hosiery has been, in several branches, of an exceptional character, and labour, in some departments, unusually scarce: and notwithstanding the workmen have preserved their trades unions, by having a central authority to appeal to, composed equally of employers and employed, all questions calculated to produce irritation and lead to disputes have been promptly settled; all inequalities in the rates of wages have been adjusted; the manufacturer has been enabled to accept his contracts without apprehension and execute them without delay, and the rights of workmen have been jealously looked after and strictly preserved. Whereas in neighbouring counties and throughout the country a chronic warfare has existed betwixt labour and capital, to the great injury of both, owing to the want of some court of appeal commanding alike the confidence of employers and employed. It is with much satisfaction that the Board is able to report that at no previous period in the history of the hosiery trade has there existed such a cordial understanding betwixt employer and employed as at the opening of the present year, and the Board trusts that this may long continue, believing that it is calculated to advance the interests of the trade, to improve the condition of the workmen, and to further the progress and well-being of the community.

Manufacturers.

A. J. MUNDELLA, President.
T. HILL (Messrs. I. & R. Morley).
R. W. SMITH.
T. ASHWELL.
J. H. LEN.
T. BLACK (Messrs. Rogers & Co).
H. F. COX.

Workmen.

J. SAXTON, Vice-President.
H. FARRANDS.
T. WILSON.
W. FOSTER.
— STRAW.
G. KENDALL.
JOHN LAMB, Secretary.

STATUTES RELATIVE TO INDUSTRIAL LEGISLATION.

ANNO DECIMO SEPTIMO GEORGHII III. REGIS.

(EMBEZZLEMENT ACT.)

CAP. LVI.

An Act for amending and rendering more effectual the several Laws now in being, for the more effectual preventing of Frauds and Abuses by Persons employed in the Manufacture of Hats, and in the Woollen, Linen, Fustian, Cotton, Iron, Leather, Fur, Hemp, Flax, Mohair, and Silk Manufactures; and also for making Provisions to prevent Frauds by Journeymen Dyers.

[October 31, 1776.]

22 Geo. II.
c. 27.

WHEREAS by an Act made in the twenty-second year of the reign of his late majesty King George the Second (intituled "An Act for the more effectual preventing of frauds and abuses committed by persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, and silk manufactures; and for preventing unlawful combinations of journeymen dyers and journeymen hotpressers, and of all persons employed in the said several manufactures, and for the better payment of their wages"), it was enacted, that if any person or persons whatsoever, who should be hired or employed to make any felt or hat, or to prepare or work up any woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, or silk manufactures, or any manufactures made up of wool, fur, hemp, flax, cotton, mohair, or silk, or of any of the said materials mixed one with another, should, from and after the twenty-fourth day of June, one thousand seven hundred and forty-nine, purloin, embezzle, secrete, sell, pawn, exchange, or otherwise unlawfully dispose of any of the materials with which he, she, or they should be respectively intrusted, whether the same or any part thereof be or be not first wrought, made up, manufactured, or converted into merchantable wares, and should be thereof lawfully convicted, in manner therein mentioned, before any one or more justice or justices of the peace of the county, riding, division, city, liberty, town, or place where such offence should be committed, or where the person or persons so charged should reside or inhabit, it should and might be lawful to and for the said justice or justices, by warrant under his or their hand and seal or hands and seals, to commit the person or persons so convicted to the house of correction or other public prison of such county, riding, division, city, liberty, town, or place, there to be kept to hard labour for the space of fourteen days, and also to order the person or persons so convicted to be once publicly whipped at the market place or some other public place of the city, town, or place where

such offender or offenders should be respectively committed; and in case of a further conviction, in manner before prescribed by the said Act, for or upon a second or other subsequent offence of the same kind, it should and might be lawful to and for the justice or justices before whom such conviction should be had to commit the person or persons so again offending to the house of correction or other public prison as aforesaid, there to be kept to hard labour for any time not exceeding three months nor less than one month, and also to order the person or persons so again offending to be publicly whipped at the market place or some other public place of the city, town, or place where such offender or offenders should be respectively committed, twice or oftener, as to such justice or justices should appear reasonable: And whereas it is thought necessary to vary the punishment for the offences hereinbefore recited: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the first day of July, one thousand seven hundred and seventy-seven, so much of the said recited Act as prescribes what the punishment shall be in any of the cases before mentioned, or before whom such conviction shall be had, whether for a first offence or a second or any subsequent offence, shall be repealed; and instead of inflicting the punishment so directed the justices of the peace before whom the conviction shall be shall commit the person convicted to the house of correction or other public prison, there to be kept to hard labour, in the case of a first offence, for any time not less than fourteen days nor more than three months, and in the case of a second or any subsequent offence, for any time not less than three months nor more than six months, and may likewise, for the first or for any subsequent offence, order the person convicted to be once publicly whipped, if such additional punishment shall by the said justice or justices be deemed proper.

So much of the said Act as prescribes the punishment to be inflicted for embezzling, pawning, &c., of materials, is hereby repealed; and other punishments substituted instead thereof.

II. Provided always, and be it further enacted by the authority aforesaid, that no person or persons who shall be charged with any offence or offences against the said recited Act of the twenty-second year of the reign of his late majesty King George the Second shall be liable to be convicted unless before two or more justices of the peace for the county, riding, division, city, liberty, town, or place where the offence shall be committed; anything contained in the said recited Act to the contrary hereof notwithstanding.

No person to be convicted, unless before two justices, &c.

III. And whereas by the said Act of the twenty-second year of the reign of his late majesty King George the Second it was also enacted, that if any person or persons should buy, receive, accept, or take, by way of gift, pawn, pledge, sale, or exchange, or in any other manner whatsoever, of or from any person or persons hired or employed to make any felt or hat, or to prepare or work up the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, or silk manufactures, or any manufactures made up of wool, fur, hemp, flax, cotton, mohair, or silk, or of any of the said materials mixed one with another, any thrums or ends of yarn, or any other materials of wool, fur, hemp, flax, cotton, or iron, or any leather, mohair, or silk, whether the same or any part thereof be or be not first wrought, made up, or manufactured, knowing the person or persons of whom he, she, or they so buy, receive, accept, or take the said materials to be so hired or employed as aforesaid, and not having first obtained the consent of the person or persons so hiring or employing him, her, or them, who should offer to sell, pawn, pledge, exchange, or otherwise dispose of the said materials, or should buy, receive, accept, or take, in any manner whatsoever, of or from any other person or persons whomsoever, any of the said materials, whether the same be or be not first wrought, made up, or manufactured, knowing the same to be so purloined or embezzled, then and in every such case the person or persons so buying, receiving, accepting, or taking any such materials, being thereof lawfully convicted in manner before prescribed by the said Act for the conviction of persons purloining or embezzling the said materials, should, for the first offence, forfeit the sum of twenty pounds, and in case the said for-

Recital of a clause in the aforesaid Act.

feiture should not be immediately paid, the justice or justices before whom such conviction should be had should commit the party or parties so convicted to the house of correction or other public prison as aforesaid, there to be kept to hard labour for the space of fourteen days, unless the said forfeiture should be sooner paid; and if within two days before the expiration of the said fourteen days the said forfeiture should not be paid, the said justice or justices is and are thereby empowered and required to order the person or persons so convicted to be publicly whipped at the market place, or some other public place of the city, town, or place where such offender or offenders should be respectively committed, once or oftener, as to such justice or justices should appear reasonable; and in case of a further conviction for or upon a second or any other subsequent offence of the same kind, the person or persons so again offending, being thereof convicted in manner before prescribed by the said Act, should for every second or other subsequent offence forfeit the sum of forty pounds; and in case the said forfeiture should not be immediately paid, the justice or justices before whom such conviction should be had should commit the party or parties so convicted to the house of correction or other public prison as aforesaid, there to be kept to hard labour for any time not exceeding three months nor less than one month, unless the said forfeiture should be sooner paid; and if within seven days before the expiration of the time for which such offender or offenders should be so committed the said forfeiture should not be paid, the said justice or justices is and are thereby empowered and required to order such offender or offenders to be publicly whipped at the market place, or some other public place of the city, town, or place where he, she, or they should be respectively committed, twice or oftener, as to such justice or justices should appear reasonable; and the said respective forfeitures of twenty pounds and forty pounds, when recovered, after satisfaction should have been made thereout to the party or parties injured, together with such costs of prosecution as should be judged reasonable by the justice or justices before whom such conviction should have been had, should be equally distributed amongst the poor of the parish or place where the person or persons so convicted should reside or inhabit: And whereas it is thought necessary to increase the pecuniary penalties directed by the said recited Act for the said offences last mentioned, and to vary the application of the said penalties for the same, and further to change the consequences of nonpayment: Be it therefore further enacted, that from and after the said first day of July, one thousand seven hundred and seventy-seven, so much of the said recited Act of the twenty-second of his late majesty King George the Second as enacts what the penalty or punishment shall be for such buying, receiving, accepting, or taking, by way of gift, pawn, pledge, sale, or exchange, or in any other manner, as is described by the said Act in the terms aforesaid, and how such penalty shall be applied, and what punishment shall be inflicted in case of nonpayment, shall be repealed; and instead thereof the penalty for the first offence shall be any sum not more than forty pounds nor less than twenty pounds, as the justices before whom the conviction shall be shall judge to be most proper; and every such pecuniary penalty shall be applied, under the direction of the justices before whom the conviction shall be, in manner following: (that is to say), in the first place, the expenses of the prosecution shall be thereout defrayed, and then such satisfaction shall be made thereout to the party or parties injured as the said justices shall think proper, and afterwards so much of the said penalty shall be paid to the informer or informers as such justices shall think fit, not exceeding in any case ten pounds, and the remainder, if any, shall be paid and distributed to and amongst the poor of the parish, town, or place where the conviction shall be, or for the use of such public charity or charities as such justices shall appoint; and if such pecuniary penalty as aforesaid shall not be paid on conviction the said justices shall commit the person convicted to the house of correction or other public prison, there to be kept to hard labour for any time not more than six months nor less than three months, as the said justices shall think fit to direct, unless such pecuniary penalty shall be sooner paid; or the said justices may send

So much of the said Act as orders the punishment for buying, receiving, &c., of any goods in the last recited clause mentioned repealed; and other punishments substituted instead thereof.

the person convicted to the house of correction or other public prison, there to remain for three days, exclusive of the day of commitment, with an order that within the said time the person so convicted shall be once publicly whipped at such market place, or other public place as aforesaid.

IV. And be it further enacted by the authority aforesaid, that from and after the said first day of July, one thousand seven hundred and seventy-seven, if any person or persons shall be brought before any justices of the peace, and shall be charged upon oath or (being of the people called Quakers) upon solemn affirmation of having been guilty of buying, receiving, accepting, or taking, by way of gift, pawn, pledge, sale, or exchange, or in any other manner, as is described by the said recited Act, in the terms aforesaid, and it shall appear to such justices that the person or persons so charged hath or have been already convicted of the like offence for which he, she, or they is or are then charged, that then such justices shall not proceed to convict such person or persons, but shall commit him, her, or them to the house of correction or some other public prison, there to remain until the next General or General Quarter Sessions of the peace to be held in and for the county, riding, division, city, liberty, town, or place where the offence shall have been committed, or until such offender or offenders shall have entered into a recognizance to answer for such offence at the said next General or General Quarter Sessions; and the justices in such General or General Quarter Sessions are hereby authorized and required to take cognizance thereof, and to hear and determine the same; and if such person shall be convicted upon the oath or (being of the people called Quakers) upon the affirmation of one or more credible witness or witnesses, the person so convicted shall forfeit and pay for such offence any sum not more than one hundred pounds nor less than fifty pounds, as the said justices shall judge to be most proper; and every such penalty shall be applied and disposed of, under the direction of the said justices in their General or General Quarter Sessions, in such manner and proportions as the penalty hereinbefore imposed for the first offence of the like nature is by this Act directed to be applied and disposed of; and if such penalty shall not be paid on conviction the said justices shall commit the person so convicted to the house of correction or other public prison, there to be kept to hard labour for any time not more than six months nor less than three months, as the said justices shall, in their discretion, think fit, unless such penalty shall be sooner paid; or the said justices may send the person convicted to the house of correction or other public prison, there to remain for three days, exclusive of the day of commitment, with an order that within the said time such person shall be once publicly whipped at such market place, or other public place as aforesaid.

V. And whereas many frauds are practised in respect to such materials as aforesaid, by persons who sell them knowing them to have been purloined or embezzled: Be it therefore further enacted, that after the said first day of July, one thousand seven hundred and seventy-seven, if any person shall sell, pawn, pledge, exchange, or otherwise unlawfully dispose of, or offer to sell, pawn, pledge, exchange, or otherwise unlawfully dispose of, any such materials as aforesaid, whether wrought or unwrought, mixed or unmixed, knowing them to have been purloined or embezzled, every such person lawfully convicted shall be liable to the same punishment as he or she would be liable to by virtue of this Act on being convicted of receiving purloined or embezzled materials knowing them to have been purloined or embezzled.

VI. And whereas such materials as aforesaid which have been purloined or embezzled are frequently received by persons knowing the same to have been so purloined or embezzled, and such materials being afterwards worked up or otherwise disposed of renders it difficult to convict such offenders: Be it therefore enacted by the authority aforesaid, that from and after the said first day of July, one thousand seven hundred and seventy seven, when any person or persons shall be brought or charged upon oath before any two or more justices of the peace, by virtue of this Act, with being suspected of or with having purloined or embezzled or with having received any such materials as aforesaid, whether the

How justices to proceed when offenders are brought before them for a second offence.

Any such offender convicted before the Quarter Sessions shall forfeit from £50 to £100, or be committed, &c.

Persons selling, pawning, &c., any such materials as aforesaid, knowing them to have been embezzled, shall be liable to the same punishment as for receiving embezzled materials.

How justices to proceed in relation to persons charged on oath with being suspected of having embezzled such materials, or of having received the same knowing them to have been embezzled, &c.

same be wrought or unwrought, mixed or unmixed, knowing the same to have been either purloined or embezzled or received from some person or persons not entitled to dispose thereof, and it shall be made appear upon the oath or (being of the people called Quakers) upon the affirmation of one or more credible witness or witnesses, to the satisfaction of such justices, that such person or persons hath or have purloined or embezzled or hath or have received any such materials as aforesaid, knowing the same to have been purloined or embezzled or received from some person or persons not entitled to dispose thereof, it shall and may be lawful for such justices, or for the justices at their General or General Quarter Sessions of the peace, and they are hereby respectively authorized and empowered (if they shall think fit) to convict such person or persons of having purloined or embezzled or of having received such materials as aforesaid, knowing the same to have been purloined or embezzled or received from some person or persons not entitled to dispose thereof, although no proof shall be given to whom such materials belong; and the person or persons so convicted shall for every such offence be subject to such and the like penalties and punishments, at the discretion of such justices respectively, as persons convicted of buying or receiving any such materials as aforesaid, knowing the same to have been purloined or embezzled, are by this Act subject and liable to.

Another clause of the Act 22 Geo. II. recited, and altered.

VII. And whereas by the said recited Act of the twenty-second of King George the Second it was also enacted, that if any person or persons intrusted with any of the materials therein and hereinbefore mentioned, in order to prepare, work up, or manufacture the same, should not use all such materials in the preparing, working up, or manufacturing of the same, and should neglect or delay, for the space of twenty-one days after such materials should be prepared, worked up, or manufactured, to return (if required by the owner or owners of such materials so to do) so much of the said materials as should not be used as aforesaid, to the person or persons intrusting him, her, or them therewith, such neglect or delay should be deemed a purloining or embezzling of such materials; and the person or persons so neglecting or delaying, being thereof convicted in manner thereinbefore prescribed for the conviction of offenders against the said Act, should suffer the like punishment as persons convicted of purloining or embezzling any of the materials thereinbefore mentioned are by the said Act rendered subject and liable to: And whereas the space of twenty-one days allowed by the said recited Act is thought too long a time to be allowed for returning the said materials, under the circumstances, and in manner aforesaid, and it may be proper to make the punishment for not returning such materials the same as for purloining or embezzling, under this Act: Be it therefore further enacted, that from and after the said first day of July, one thousand seven hundred and seventy-seven, so much of the said recited Act as allows twenty-one days after the preparing, working up, or manufacturing the said materials, for returning so much of the said materials as shall not be used in such preparing, working up, or manufacturing, and declares that the punishment for not so returning the said materials within the said time shall be the same as under the said Act is directed for purloining or embezzling, shall be repealed, and only eight days shall be allowed for returning the said materials in manner aforesaid, and the punishment for not returning them within the said eight days shall be the same as is by this Act directed to be inflicted for purloining or embezzling.

Another clause of the said Act recited and repealed.

VIII. And whereas by the said Act of the twenty-second year of the reign of his late majesty King George the Second it is enacted, that from and after the said twenty-fourth day of June, one thousand seven hundred and forty-nine, if any person who should be hired, retained, or employed to prepare or work up any of the manufactures thereinbefore mentioned, for any one master, should neglect or refuse the performance thereof, by procuring or permitting himself or herself to be subsequently retained or employed by any other master or person whatsoever before he or she should have completed the work which he or she was first and originally so hired, retained, or employed to perform, and which was first delivered to him or her, then and in every such case the person

so offending, being thereof lawfully convicted by the oath or (being of the people called Quakers) affirmation of one or more credible witness or witnesses, before one or more justice or justices of the peace of the county, riding, division, city, liberty, town, or place where the offence or offences should be committed, should be sent to the house of correction, there to be kept to hard labour for any time not exceeding one month: And whereas the said provision contained in the said recited clause is not found sufficient for the purpose intended, and it is apprehended that some other provision more proper may be made: Be it therefore further enacted, that from and after the said first day of July, one thousand seven hundred and seventy-seven, the whole of the said last recited clause shall be repealed; and that from and after the said first day of July, one thousand seven hundred and seventy-seven, if any person, being hired, retained, or employed to prepare or work up any materials, whether mixed or unmixed, for any master or masters, shall wilfully neglect or refuse the performance thereof for eight days successively, or, having taken in any materials, whether mixed or unmixed, for manufacture, from one master, or two or more masters being copartners, shall afterwards take in any materials, whether mixed or unmixed, for manufacture, from any other master or masters, or shall procure or permit himself or herself to be employed or retained in any other occupation or employment whatsoever sooner than eight days before the completion of the work first taken, then in every such case such person, being thereof lawfully convicted by the oath or (being of the people called Quakers) affirmation of one or more credible witness or witnesses, before two or more justices of the peace of the county, riding, division, city, liberty, town, or place where the offence or offences shall be committed, shall be sent to the house of correction or other public prison, there to be kept to hard labour for any time not exceeding three months nor less than one month (b).

Any person being employed to work up materials, who shall neglect to perform the same for eight days, &c., shall be sent to the house of correction.

IX. And whereas it frequently happens that persons receive the said materials in fictitious names, in order to be manufactured, and that persons receive such materials in their own names, in order to be manufactured by themselves, and afterwards deliver the same to others to be manufactured, without the knowledge or consent of the owners thereof, and that carriers, or other persons employed to deliver materials to workmen to be prepared or manufactured, do designedly deliver such materials to other persons than those intended by the owner of such materials: Be it therefore further enacted by the authority aforesaid, that from and after the said first day of July one thousand seven hundred and seventy-seven, if any person shall receive any of the aforesaid materials in a fictitious name, in order to be manufactured, or if any person shall receive in his or her own name any of the said materials, in order to be manufactured by himself or herself, and afterwards deliver the same, or any part thereof, to any other person to be manufactured (without the consent of the owner thereof), or if any carrier, or other person employed to deliver any such materials to any workman to be prepared or wrought up, shall designedly deliver the same to any other person than the person to whom such materials were ordered or intended to be delivered by the owner thereof, all and every person and persons offending in any of the cases aforesaid shall for every such offence be liable to prosecution, in the same manner and to the same punishment as is by this Act directed in respect to persons taking in any of the said materials in order to work up, and afterwards wilfully neglecting or refusing the performance of their work for the space of time aforesaid.

If any person shall receive any materials to be manufactured in a fictitious name, or shall deliver the same to any other person without the consent of the owner, &c., he shall be liable to the same punishment as persons neglecting to perform their work, &c.

X. And whereas it frequently happens that materials used in the manufactures before mentioned are found or known to be concealed in the possession of persons who have received the same, knowing them to be purloined or embezzled, or of persons known not to be entitled to dispose of the same: And whereas the discovery and conviction of the purloiners and embezzlers, buyers and receivers of

(b) This section is superseded by the 30 & 31 Vict. c. 141. See first schedule, appended to that Act.

Justices on receiving complaint on oath that embezzled materials are suspected to be concealed in any house, &c., may grant a warrant for searching the same, and persons in whose possession such materials shall be found guilty of misdemeanor.

such materials, is full of difficulty, from the close and clandestine manner in which the offence is committed, and there is still greater difficulty in proving whose property such materials are; and it would tend to the discouragement and suppression of such offences if the discovery and conviction of such offenders were rendered more easy: And whereas by the said recited Act of the twenty-second year of his late majesty King George the Second, justices of the peace, after conviction of any offender for purloining or embezzling the said materials, or for buying or receiving the same, are authorized to grant warrants for searching the houses and other places of the persons so convicted, but no such authority is given before conviction, nor in any other house or place except such as belongs to a person convicted: Be it therefore further enacted, that it shall and may be lawful for any two justices of the peace of any county, riding, division, city, liberty, town, or place, upon complaint made to them upon oath by any one credible person, or (being of the people called Quakers) upon solemn affirmation, that there is cause to suspect that any such purloined or embezzled materials, whether mixed or unmixed, wrought or unwrought, are concealed in any dwelling house, outhouse, yard, garden, or other place or places, by virtue of a warrant under their hands and seals to cause every such dwelling house, outhouse, yard, garden, or place to be searched in the daytime, and if any such materials suspected to be purloined or embezzled shall be found therein, to cause the same, and the person or persons in whose house, outhouse, yard, garden, or other place the same shall be found, to be brought before any two justices of the peace for the same county, riding, division, city, liberty, town, or place, and if the said person or persons shall not give an account to the satisfaction of such justices how he, she, or they came by the same, then the said person or persons so offending shall be deemed and adjudged guilty of a misdemeanor, and shall be punished in manner hereinafter mentioned, although no proof shall be given to whom such materials belong.

Peace officers in towns corporate, &c., may apprehend all persons suspected of having or carrying after sunset any materials suspected to be purloined, &c.

XI. And be it further enacted, that every peace officer, constable, headborough, or tythingman in every county, city, town corporate, or other place where there shall be officers, and every headle within his ward, parish, or district, and every watchman, during such time only as he is on his duty, shall and may apprehend or cause to be apprehended all and every person or persons who may reasonably be suspected of having or carrying or any ways conveying, at any time after sun-setting and before sun-rising, any of such materials suspected to be purloined or embezzled, and the same, together with such person or persons, as soon as conveniently may be, convey or carry before any two justices of the peace for the county, riding, division, city, liberty, town, or place within which the suspected person or persons shall be apprehended; and if the person or persons so apprehended in conveying any such materials shall not produce the party or parties duly entitled to dispose thereof, from whom he, she, or they bought or received the same, or some other credible witness, to testify upon oath or (being of the people called Quakers) upon solemn affirmation to the sale or delivery of the said materials (which oath or affirmation respectively such justices are hereby empowered to administer), or shall not give an account, to the satisfaction of such justices, how he, she, or they came by the same, then the said person or persons so apprehended shall be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned, although no proof shall be given to whom such materials belong.

Justices may, at the request of persons brought before them, appoint a reasonable time to produce the persons entitled to

XII. Provided always, and be it further enacted, that in either of the two cases last before mentioned, when any person or persons who shall be brought before any two justices of the peace shall request of such justices to appoint a reasonable time to produce the person or persons, duly entitled to sell or dispose of the same, of or from whom he, she, or they bought or received the same, or some one or more credible witness or witnesses to prove the sale or delivery thereof, then and in such case it shall and may be lawful for the said justices and they are hereby authorized and required to appoint such reasonable time as aforesaid, and to issue out a summons to the constable or other peace officer of

the parish or place where such person or persons, or such witness or witnesses, shall respectively reside, requiring him, her, or them to appear before two or more justices at such time and place as shall be so appointed by such justices, in order to be examined and give evidence on oath or (being of the people called Quakers) solemn affirmation of the several matters aforesaid; but such person or persons, at the time of making such request, shall enter into a recognizance, with or without surety or sureties, as such justices shall think proper, for his, her, or their appearance before them at the time so to be set, or, for want of such recognizance as aforesaid, shall be committed until the time that shall be set or appointed by the said justices for the appearance of such party or parties, witness or witnesses; and if at such appointed time such person or persons shall be convicted of any of the offences aforesaid, then and in such case he, she, or they shall suffer such punishment as is hereinbefore directed to be inflicted on persons guilty of such offences.

XIII. And be it further enacted, that where any person or persons shall be convicted of a misdemeanor in either of the two cases last before mentioned, it shall and may be lawful for the justices before whom the conviction shall be to cause the said materials so found or seized as aforesaid to be deposited in the hands of the churchwardens or overseers of the poor of the place where such materials shall be found or seized, or in any other convenient place, for any time not exceeding thirty days, and in the meantime to order the said churchwardens and overseers of the poor, or one of them, to insert an advertisement in some one or more of the public newspapers usually published or circulated in or near such place, or otherwise to cause notice to be given by some public crier, and by fixing on the church or chapel door notice describing such materials, and where the same are so deposited, to the end that persons having lost such materials, or any reputable person or persons in their behalf, may come and claim the same; and in case any person or persons can prove his, her, or their property in the said materials upon oath, or (being of the people called Quakers) upon his, her, or their solemn affirmation, to the satisfaction of any two justices of the peace for such county, riding, division, city, liberty, town, or place, then such justices shall order restitution of such materials to the owner or owners thereof, after paying the reasonable charges of removing, depositing, and giving public notice of the same; but if before the end of the said thirty days no person or persons shall come and prove his, her, or their property in such materials, nor any reputable person or persons on his, her, or their behalf, then the said justices shall order and direct the same to be sold for the best price that can reasonably be had, and after deducting such charges as aforesaid, together with the charges of sale, one moiety of the money arising from such sale shall be given to the person or persons, or either of them, who shall apprehend or prosecute the offender or offenders guilty of either of the misdemeanors aforesaid, as the said justices shall appoint, and the other moiety thereof either to and amongst the poor of the parish, town, or place where the conviction shall be, or to such public charity or charities as the justices convicting shall appoint.

XIV. And be it further enacted, that every person deemed and adjudged guilty of a misdemeanor, in having in his or her possession any materials suspected to be purloined or embezzled, and not producing the party or parties, being duly entitled to dispose of the same, of whom he or she bought or received the same, nor giving a satisfactory account how he or she came by the same, or of a misdemeanor in having, carrying, or conveying of the said materials suspected to be purloined or embezzled, and not producing the party or parties, being duly entitled to dispose of the same, of whom he or she bought or received the same, nor any credible witness to testify upon oath or (being of the people called Quakers) upon solemn affirmation the sale or delivery thereof, nor giving a satisfactory account how he or she came by the same (as the case shall be), shall for every such misdemeanor forfeit, for the first offence, the sum of twenty pounds, and for the second offence, the sum of thirty pounds; and for every subsequent offence the sum of forty pounds; all which said respective forfeitures shall and may be

dispose of the materials, &c., on the persons making such request entering into a recognizance, &c.

On any person being convicted of a misdemeanor as aforesaid, the materials so found shall be deposited in the hands of the churchwardens, &c.; and if any person can prove his property in the said materials, they shall be delivered to him, on paying the charges of removing, &c., but if no person prove his property in them, they shall be sold, &c.

Penalty on persons having in their possession materials suspected to be purloined, &c.

Forfeitures
may be
levied by
distress.

On failure
of distress,
offender to
be com-
mitted.

Owners of
materials
delivered
to journeymen,
&c., to
be worked
up, may,
at all
seasonable
hours, enter
their shops
or outhouses
to inspect
their ma-
terials.

Penalty on
refusal of
entrance,
&c.

All penalties
in the Act
22 Geo. II.
and in this
Act, relat-
ing to the
said ma-
terials, shall
be applic-
able to the
tools,
&c., with
which any
person is in-
trusted for
manufactur-
ing the
same.

levied by distress and sale of the goods and chattels of every such offender (rendering to him or her the overplus after charges of the said distress and sale deducted), by warrant under the hands and seals of the justices before whom such offender shall be deemed and adjudged guilty, of which forfeiture one moiety shall be paid to the informer and the other moiety thereof to and amongst the poor of the parish, town, or place where such conviction shall be, or to such public charity or charities as the justices convicting shall appoint; and if no sufficient distress shall be found whereon to levy the said respective forfeitures then the said justices shall and may commit every such offender so respectively deemed and adjudged guilty as aforesaid to the common gaol or other prison or house of correction within his or their jurisdiction, without bail or mainprize, for the space of one month for the first offence, and for the second offence for the space of two months, and for every subsequent offence for the space of six months.

XV. And whereas it sometimes happens, by occasion of the very long detention of such materials as aforesaid, delivered out to journeymen or other persons employed to work up the same, it cannot be known to the master or owners of such materials whether the same may have been purloined or embezzled, or whether the said materials are wholly or in part wrought or begun to be wrought, or in what state or condition such materials may be; for remedy whereof be it further enacted, that from and after the said first day of July, one thousand seven hundred and seventy-seven, it shall be lawful for the owner or owners of any such materials, from time to time, as occasion shall require, to demand entrance, and enter, at all seasonable hours in the daytime, into the shops or outhouses of any person or persons employed by him or them to work up any of the said materials, or other place or places where the work shall be carried on, and there to inspect the state and condition of such materials; and in case of refusal by any such person or persons so employed to permit such entrance or inspection, he, she, or they so refusing shall forfeit and pay such sum of money not exceeding forty shillings nor less than ten shillings, as the justices before whom he, she, or they shall be convicted shall think proper, to be recovered and applied in the same manner as is by this Act directed for the misdemeanor of being in the possession of any such materials without being able to account satisfactorily for such possession.

XVI. And whereas the said recited Act of the twenty-second year of the reign of his late majesty King George the Second contains no provision for the protection and recovery of the tools and implements with which any person or persons employed in preparing, working up, or manufacturing such materials as aforesaid shall be intrusted for that purpose, nor any provision in respect to the drugs and ingredients used in dyeing, preparing, or manufacturing such of the said materials as are usually dyed, prepared, or manufactured: Be it therefore enacted, that from and after the said first day of July, one thousand seven hundred and seventy-seven, every penalty or punishment directed by or other provision contained in the said recited Act in respect to the said materials so far as the said recited Act is not varied by this Act, and all the provisions in this Act contained in respect to the said materials, shall extend and be applicable to any tool or tools and implement or implements with which any person or persons shall be intrusted for making, working up, or manufacturing the said materials, and also to any drug or drugs, ingredient or ingredients, with which any person or persons shall be intrusted, for the purpose of dyeing, preparing, or manufacturing such of the aforesaid materials as are usually dyed, prepared, or manufactured, in the same manner as if the said tools and implements, drugs and ingredients, were particularly mentioned both in the said recited Act and in the preceding provisions of this Act.

XVII. And whereas journeymen dyers, servants, and apprentices, frequently abuse the trust reposed in them, by dyeing goods for their own profit, without the consent of their masters: Be it therefore enacted, that from and after the said first day of July, one thousand seven hundred and seventy-seven, if any person

hired, retained, or employed as a journeyman dyer, or as a servant or apprentice, in the dyeing of any felt or hat, or any woollen, linen, fustian, cotton, leather, fur, flax, mohair, or silk materials, whether the same shall be wrought or unwrought, or shall be mixed or unmixed with other of the said materials, shall, without the consent of the master, person or persons, by whom such journeyman, servant, or apprentice, shall be hired, retained, or employed, wilfully dye any of the said materials, whether wrought or unwrought, or mixed or unmixed with other of the said materials, or without such consent shall wilfully receive any such materials as aforesaid, for the purpose of dyeing the same, whether the same shall be dyed or prepared for dyeing, he or she so guilty of either of the said offences shall for the first offence forfeit the sum of ten shillings, and for the second offence the sum of twenty shillings, and for every subsequent offence the sum of forty shillings; or if any person shall procure any such materials as aforesaid to be dyed by any person so hired, retained, or employed as a journeyman, servant, or apprentice, without the consent of his or her master or employer, or shall offer any such materials to any such journeyman, servant, or apprentice, for the purpose aforesaid, he or she so offending, being thereof lawfully convicted by the oath or (being of the people called Quakers) affirmation of one or more credible witness or witnesses, before two or more justices of the peace for the county, riding, division, city, liberty, town, or place where the offence shall be committed, shall for the first offence forfeit the sum of five shillings, and for the second offence the sum of twenty shillings, and for every subsequent offence the sum of four pounds; and each of the said penalties shall be paid to the informer or informers, and in case of nonpayment on conviction the person so convicted shall be committed by the justices before whom the conviction shall be to the common gaol or house of correction, to remain for any time not exceeding one month, as such justices shall order and direct.

XVIII. Provided always, and be it further enacted, that any inhabitant of any parish, township, or place in which any offence shall be committed contrary to the Act of the twelfth year of the reign of his late majesty King George the First, or contrary to the Act of the twenty-second year of his late majesty King George the Second, or contrary to this Act, shall be deemed a competent witness, notwithstanding his or her being an inhabitant of such parish, township, or place.

XIX. And be it further enacted by the authority aforesaid, that it shall and may be lawful to and for any one justice of the peace of any county, riding, division, city, liberty, town, or place, and he is hereby required, upon complaint to him made upon oath or (if the person complaining be of the people called Quakers) solemn affirmation, of any offence committed against this Act, within the same county, riding, division, city, liberty, town, or place, to issue his warrant for apprehending and bringing before any two or more justices of the peace of the same county, riding, division, city, liberty, town, or place, the person or persons charged with such offence; and the justices before whom such person or persons shall be brought are hereby authorized and required to hear and determine the matter of such complaint, and to proceed to judgment and conviction thereupon (c).

XX. And whereas the said Act of the twenty-second year of the reign of his late majesty King George the Second only gives an appeal from an order of any justice or justices of the peace, to the General or General Quarter Sessions of the peace where an order is made by any justice or justices of the peace in the case of the buyer or receiver of such purloined or embezzled materials as aforesaid, and in respect to the sale or disposal of such materials found on searching by warrant, after any conviction for purloining or embezzling, or for receiving or buying such purloined or embezzled materials: And whereas it is thought more proper to give a right of appealing in the case of other orders of any justice or justices of the peace, to be made by force of an Act made in the twelfth year of

If any journeyman dyer, &c., shall, without the consent of his employer, dye any woollen, linen, &c., he shall forfeit, for the first offence, 10s., &c.; or if any person shall procure any such materials to be so dyed, he shall forfeit, for the first offence, 6s., &c.

Inhabitants of any parish wherein any of the aforesaid offences shall be committed to be deemed competent witnesses. Justice of peace, on complaint to him made upon oath of any offence against this Act, may issue his warrant for apprehending the offender.

Persons aggrieved by the order of any two justices, &c., may appeal to the Quarter Sessions, giving notice to such justices of their intention to

(c) This section is superseded by 30 & 31 Vict. c. 141. See first schedule appended to that Act.

appeal, and
entering
into recog-
nizance, &c.

the reign of his late majesty King George the First (intituled "An Act to prevent unlawful combinations of workmen employed in the woollen manufactures, and for better payment of their wages), and of the said Act, and also in the case of all orders to be made by any justices of the peace under this Act: Be it therefore further enacted, that if any person shall think himself or herself aggrieved by the order or judgment of any two justices before whom he or she shall have been convicted of any of the offences in the said Acts of the twelfth year of the reign of King George the First and the twenty-second year of the reign of King George the Second, or in this Act, such person may appeal, and the said justices are hereby required to make known to such person, at the time of such conviction, his or her right to appeal, to the next General or General Quarter Sessions of the peace to be holden for the county, riding, division, city, liberty, town, or place where such conviction shall have been made (such person at the time of such conviction giving to such justices notice in writing of his or her intention to appeal, and also entering into a recognizance, at the time of such notice, with sufficient sureties, conditioned to try such appeal, and to abide the judgment of and pay such costs as shall be awarded by the justices at such Sessions); but if the person giving such notice of appeal shall not at the time of giving such notice enter into such recognizance as aforesaid, then the justices to whom such notice of appeal shall have been given shall and may commit such person or persons to the house of correction or other public prison of such county, riding, division, city, liberty, town, or place, there to remain until the said next General or General Quarter Sessions of the peace to be holden in and for such place, unless such recognizance shall be sooner entered into; and the said justices before whom such conviction shall have been made, or any other two or more justices of the same county, riding, division, city, liberty, town, or place, are hereby empowered and required to take, and the justices at such Sessions are hereby authorized and required, upon due proof made of such notice of appeal, either by the acknowledgment of the justices to whom the same shall have been given, or otherwise, to hear and determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable to be paid by either party; and if upon the hearing of such appeal the judgment of the justices before whom the appellant shall have been convicted shall be affirmed, such appellant shall, within forty-eight hours next after the same shall be so affirmed, suffer such corporal punishment as shall have been directed to be inflicted upon him or her for the offence whereof he or she shall have been convicted, or shall immediately pay the sum which he or she shall have been adjudged to forfeit, together with such costs as the justices in the said Sessions shall award to be paid by him or her, for defraying the expenses sustained by the defendant or defendants in such appeal, or in default of making such payments shall be committed to the common gaol or house of correction, in the same manner and for the same time, to be computed from the affirmance of such conviction, as shall be directed by the original judgment of conviction, unless the person or persons so convicted shall have been imprisoned under the original conviction, in which case the time for which such person or persons shall have been so confined shall be included in the order of confirmation.

How the
delinquent
shall be
punished,
in case the
Sessions con-
firm his
conviction.

Part of 23
Geo. II. c.
13 repealed.

XXI. And whereas an Act passed in the twenty-third year of the reign of his late majesty King George the Second (intituled "An Act for the more effectually punishing of persons convicted of seducing artificers in the manufactures of Great Britain or Ireland out of the dominions of the crown of Great Britain; and to prevent the exportation of utensils made use of in the woollen and silk manufactures from Great Britain or Ireland into foreign parts; and for the more easy and speedy determination of appeals allowed in certain cases by an Act made in the last session of Parliament, relating to persons employed in the several manufactures therein mentioned"), prescribes a form for conviction of the several offences mentioned in the said recited Act of the twenty-second of George the Second, but such form is not adapted to the said last mentioned Act as altered by this Act; and it may be useful to have one general form for the said recited Act of

the twenty-second of George the Second and this Act: Be it therefore further enacted, that in respect to all offences which from and after the said first day of July, one thousand seven hundred and seventy-seven, shall be committed against the said recited Act of the twenty-second of George the Second, so much of the said Act of the twenty-third of George the Second as prescribes a form of conviction for offences against the said Act of the twenty-second of George the Second shall be repealed; and that from and after the said first day of July, one thousand seven hundred and seventy-seven, the justices before whom any offender shall be convicted of any offence, either against the said Act of the twenty-second of George the Second, or varied by this Act, or against this Act, shall cause the conviction to be certified to the next General or General Quarter Sessions of the peace to be held in and for the county, riding, division, city, liberty, town, or place where such conviction was made, to be filed with the records of such Sessions; and such conviction shall and may be drawn up and written on parchment, and certified in the following form of words, as far as the name of the person and the nature of the case will admit of; (that is to say),

How Justice
to proceed
for conviction
of offenders
against
the said Act
of 22 Geo. II.
or this Act.

"Middlesex (or any other) BE it remembered, that on the day Form of
"place, as the case shall of in the year of our Lord conviction.
"be), to wit.) A.B. was convicted before us of his
"Majesty's justices of the peace in and for the said county of or
"for the riding of the said county of or for the city, liberty,
"town, or place aforesaid, in the said county (as the case shall
"be) of [here specify the offence, and when and where the same was
"committed"]. Given under our hands and seals, the day and year first above
"written."

XXII. Provided always, and be it further enacted, that no order made touching or concerning any of the matters in this Act contained, or any proceedings to be had touching the conviction of any offender or offenders against the said Act of the twenty-second of George the Second, or this Act, shall be quashed for want of form, or be removed or removable by certiorari into his Majesty's Court of King's Bench; and the justices before whom such convictions shall be had shall cause the same, drawn up in the form aforesaid, to be fairly written upon parchment, and transmitted to the next General or General Quarter Sessions of the peace to be held for the county, riding, division, city, liberty, town, or place wherein such conviction was had, to be filed and kept amongst the records of the said General or General Quarter Sessions; and in case the person or persons so convicted shall appeal from the judgment of the said justices to the said General or General Quarter Sessions, the justices on such General or General Quarter Sessions are hereby required, upon receiving the said conviction drawn up in the form aforesaid, to proceed to the hearing and determination of the matter of the said appeal, according to the direction of the said Act, any law or usage to the contrary notwithstanding.

Proceedings not to be quashed for want of form nor removed by certiorari.

XXIII. Provided also, and be it further enacted, that nothing herein contained shall extend or be construed to extend to repeal any former law or laws now in being for the punishment of any of the offences herein above specified, except so far as is particularly expressed by this Act; and no offender who shall have been proceeded against upon or by virtue of this Act for any of the offences herein specified, shall for the same offence be afterwards proceeded against upon or by virtue of any such former law or laws.

XXIV. Provided also, and be it further enacted, that nothing contained in this Act shall extend to affect any person or persons for any offence committed or to be committed against the said recited Act of the twenty-second year of the reign of his late majesty King George the Second, before the said first day of July, one thousand seven hundred and seventy-seven, but all and every such offender and offenders shall and may be prosecuted and punished in the same manner as if this Act had not been made.

XXV And be it further enacted, that if any suit or action shall be com-

Limitation of actions.	menced or prosecuted against any person or persons for anything done or to be done in pursuance of this Act, every such suit or action shall be severally brought, laid, and tried in the county or place where the fact was committed, and not elsewhere; and the defendant or defendants in every such action or suit shall
General issue.	and may plead the general issue, and give this Act and the special matter in evidence, at any trial to be had thereupon, and that the same was done in pursuance of and by the authority of this Act; and if it shall appear to be so done, or if any such suit or action shall be brought in any other county or place than where the fact was committed, then the jury shall find for the defendant or defendants; and upon such verdict, or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his, her, or their action after the defendant or defendants shall have appeared, or if upon demurrer judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall and may recover treble costs, and have the like remedy for the same as any defendant or defendants hath or have for costs in other cases at law.
Treble costs.	

ANNO QUINTO GEORGII IV. REGIS.

CAP. XCVI.

An Act to Consolidate and Amend the Laws relative to the Arbitration of Disputes between Masters and Workmen.

[June 21, 1824.]

3 Geo. II. (1) in part.	WHEREAS it is expedient that the laws relative to the arbitration of disputes between masters and workmen should be consolidated and amended, and one general law made applicable to every description of trade and manufacture: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act so much of a certain Act passed in the Parliament of Ireland in the third year of King George the Second, intituled "An Act to prevent unlawful combinations of workmen, artificers, and labourers employed in the several trades and manufactures of this kingdom, and for the better payment of their wages; as also to prevent abuses in making of bricks, and to ascertain their dimensions," as relates to the decision of disputes as therein mentioned; also a certain other Act passed in the thirty-ninth and fortieth years of King George the Third, intituled "An Act for settling disputes that may arise between masters and workmen engaged in the cotton manufacture in that part of Great Britain called England;" also a certain other Act passed in the thirty-ninth and fortieth years of King George the Third, intituled "An Act to repeal an Act passed in the last session of Parliament, intituled 'An Act to prevent unlawful combinations of workmen,' and to substitute other provisions in lieu thereof;" also a certain other Act passed in the forty-first year of King George the Third, intituled "An Act to amend so much of an Act passed in the thirty-ninth and fortieth years of the reign of his present Majesty, intituled 'An Act to repeal an Act passed in the last session of Parliament, intituled "An Act to prevent unlawful combinations of workmen," and to substitute other provisions in lieu thereof,' as relates to the forms of convictions therein referred to;" also a certain other Act passed in the forty-third year of King George the Third, intituled "An Act for preventing and settling disputes which may arise between masters and weavers engaged in the cotton manufacture in Scotland, and persons employed by such weavers, and persons engaged in ornamenting cotton goods by the needle;" also a certain other Act passed in the forty-fourth year of King George the Third, intituled "An Act to amend an Act passed in the thirty-ninth and fortieth years of his present Majesty, intituled 'An Act for settling disputes
39 & 40 Geo. III. c. 90.	
39 & 40 Geo. III. c. 106.	
41 Geo. III. c. 88.	
43 Geo. III. c. 151.	
44 Geo. III c. 87.	

that may arise between masters and workmen engaged in the cotton manufacture in that part of Great Britain called England;" and also a certain other Act passed in the fifty-third year of King George the Third, intituled "An Act for the better regulation of the cotton trade in Ireland," shall be and the same are hereby repealed; save and except in as far as the same may have repealed any prior Acts or enactments.

II. And be it further enacted, that the following subjects of dispute arising between masters and workmen, or between workmen and those employed by them, in any trade or manufacture in any part of the United Kingdom of Great Britain and Ireland, may be settled and adjusted in manner hereafter mentioned; that is to say, disagreements respecting the price to be paid for work done, or in the course of being done, whether such disputes shall happen or arise between them respecting the payment of wages as agreed upon, or the hours of work as agreed upon, or any injury or damage done or alleged to have been done to the work, or respecting any delay or supposed delay in finishing the work, or the not finishing the work in a good and workmanlike manner, or according to any contract, or to bad materials; cases where the workmen are to be employed to work any new pattern which shall require them to purchase any new implements of manufacture, or to make any alteration upon the old implements for the working thereof, and the masters and workmen cannot agree upon the compensation to be made to such workmen for or in respect thereof; disputes respecting the length, breadth, or quality of pieces of goods, or, in the case of cotton manufacture, the yarn thereof, or the quantity and quality of the wool thereof; disputes respecting the wages or compensation to be paid for pieces of goods that are made of any great or extraordinary length; disputes in the cotton manufacture respecting the manufacture of cravats, shawls, policat, romal, and other handkerchiefs, and the number to be contained in one piece of such handkerchiefs; disputes arising out of, for, or touching the particular trade or manufacture, or contracts relative thereto, which cannot be otherwise mutually adjusted and settled; disputes between masters and persons engaged in sizing or ornamenting goods; but nothing in this Act contained shall authorize any justice or justices acting as hereinafter mentioned to establish a rate of wages or price of labour or workmanship at which the workmen shall in future be paid, unless with the mutual consent of both master and workman: Provided always, that all complaints by any workman as to bad materials shall be made within three weeks of his receiving the same; and all complaints arising from any other cause shall be made within six days after such cause of complaint shall arise. (Extended to fourteen days by 7 Will. IV. and 1 Vict. c. 67, s. 1.)

III. And be it further enacted, that whenever such subjects of dispute shall arise as aforesaid, it shall be lawful for the master and workman, or either of them, to demand and have an arbitration or reference thereof in manner following; that is to say, where the party complaining and the party complained of shall come before or agree by any writing under their hands to abide by the determination of any justice of the peace or magistrate of any county, riding, division, stewartry, barony, city, burgh, town, or place within which the parties reside, it shall and may be lawful for such justice of the peace or magistrate to hear and finally determine, in a summary manner, the matter in dispute between such parties; but if such parties shall not come before or so agree to abide by the determination of such justice of the peace or magistrate, then it shall be lawful for any such justice or magistrate, and such justice of the peace or magistrate is hereby required, on complaint made before him, and proof by the examination of the party making such complaint, that application has been made to the person or persons against whom such cause of complaint has arisen, or his, her, or their agent or agents, if such dispute has arisen with such agent or agents, to settle such dispute, and that the same has not been settled upon such complaint being made, or where the dispute relates to a bad warp, that such cause of complaint has not been done away with within forty-eight hours after such application, to summon before him such person or persons, or agent

Enumeration of the causes of dispute that may be referred.

Limitation of time for workmen to lodge their complaints.

Appointment of referees.

"I, A. B., one of the justices of the peace acting for do hereby
 "certify that the above-named C. D. and E. F. [*or one of them, as the case may*
 "*be*], having refused or delayed to act in the above-mentioned reference, L. M.
 "and N. O. [*or L. M. only, as the case may be*], are [*or is*] by me duly nominated
 "referees [*or referees*], together with the above-named C. D. [*or E. F.*] to settle
 "the matters in difference between the above-named G. H. and I. K.; and the
 "said C. D. or E. F., together with the said L. M. [*or the said L. M. or N. O., as*
 "*the case may be*], are directed to meet at the place above mentioned, on
 "the day of in the year of our Lord at
 "of the clock in the forenoon [*or afternoon, as the case may be*]. A. B."

And the persons so appointed as aforesaid shall hear and examine the parties and their witnesses, and determine such dispute within two days after such nomination, exclusive of Sundays, and the determination of such arbitrators shall be final and conclusive.

VI. And be it further enacted, that in all cases where complaints are made respecting bad warps or utensils by workmen, the place of meeting of the referees shall be at or as near as may be to the place where the work shall be carrying on, and in all other cases at or as near as may be to the place or places where the work has been given out. Place for the meeting of referees.

VII. Provided also, and be it further enacted, that if any person so complaining as aforesaid shall not attend, or send some person on his or her behalf, at the time and place appointed by such justice of the peace, for the purpose of naming such persons as aforesaid, such person shall not in such case be entitled to the benefit of this Act; and if any person against whom any such complaint shall have been made as aforesaid shall not attend, or send some person on his or her behalf, the justice of the peace shall thereupon nominate a person for him out of such persons so proposed as aforesaid. Attendance of parties.

VIII. And be it further enacted, that the said arbitrators and referees shall meet at the time and place fixed by the justice of the peace by whom such referees were appointed, and shall, by inspection of the work in regard to which the dispute may have arisen, by hearing and examining the parties, or any other persons on their behalf, or that attend to give evidence respecting the matters in dispute, upon oath (which the said arbitrators and referees are hereby empowered to administer), or otherwise, or by otherwise ascertaining the true state of the case, in such manner as to such arbitrators and referees shall appear necessary, proceed to determine the matter or matters in dispute referred to them; and the award to be made by such arbitrators and referees shall be final and conclusive between the parties without being subject to review or challenge by any court or authority whatsoever. Investigation of the complaint.

IX. And be it further enacted, that it shall be lawful for any arbitrator or arbitrators, referee or referees, and he or they are hereby authorized and required at the request in writing of any of the parties to issue his or their summons to any witness or witnesses to appear and give evidence before such arbitrator or arbitrators, referee or referees, at the time and place appointed for hearing and determining any such dispute, and which time and place shall be specified in such summons; and if any person so summoned to appear as a witness as aforesaid shall not appear before such arbitrator or arbitrators, referee or referees, at the time and place specified in such summons, or offer some reasonable excuse for the default, or, appearing according to such summons, shall not submit to be examined as a witness, and give his evidence before such arbitrator or arbitrators, referee or referees, touching the matter of such dispute, then and in every such case it shall be lawful for any one or more of his Majesty's justices of the peace acting in and for the county, stewartry, riding, division, barony, city, burgh, town, or place where such dispute shall have arisen, and they are hereby authorized (proof on oath, in the case of any person not appearing according to such summons, having been first made before such justice or justices of the due service of such summons on every such person by delivering the same to him, or by Arrest and commitment of refractory witnesses.

leaving the same twenty-four hours before the time appointed for such person to appear before such arbitrator or arbitrators, referee or referees, at the usual place of abode of such person), by warrant under the hands of any such justice or justices to commit any such person so making default in appearing, or appearing and refusing to give evidence, to some prison within the jurisdiction of any such justice or justices, there to remain, without bail or mainprize, for any time not exceeding two calendar months nor less than seven days, or until such person shall submit himself to be examined, and give his evidence before such arbitrator or arbitrators, referee or referees as aforesaid: Provided always, that in case such dispute shall be heard and determined before such offender shall submit to be examined, and give evidence as aforesaid, then and in every such case he, she, or they shall be imprisoned the full term of such commitment.

Adjournment of the complaint from the referees to a justice.

X. And be it further enacted, that in case such arbitrators and referees so appointed cannot agree upon and decide such matter or matters in dispute so referred as aforesaid, or shall not make and sign their award within three days after the date of the order of such justice, certifying their appointment, then the said arbitrators and referees shall, without delay, go before the justice by whom they were appointed, and in case of his absence or indisposition, before any other of his Majesty's justices of the peace acting in and for the county, stewardry, riding, division, barony, city, burgh, town, liberty, or place, and residing nearest to the place where the meeting to settle such dispute shall have taken place, and shall state to such justice or justices who may be present the points in difference between them the said arbitrators and referees, which points in difference the said justice or justices shall and is and are hereby authorized and required to hear and determine upon the statement of the arbitrators and referees; and the said justice or justices is and are hereby directed and required to settle and determine the matter in dispute with all possible despatch, and in all cases within the space of two days after the expiration of the time hereby allowed to the arbitrators and referees to make and sign their award; and the determination of such justice or justices shall be final and conclusive between the parties so differing as aforesaid, without being subject to review or challenge by any court whatsoever.

Proceeding where one referee refuses to go before the justice.

XI. And be it further enacted, that if either arbitrator or referee shall neglect or refuse to go before such justice of the peace in the manner herein directed, it shall and may be lawful for such justice, after summoning the arbitrators to attend him, to determine the matter or matters in dispute, upon the statement and representation of either of the arbitrators who shall come before him.

Manufacturer not to act as justice.

XII. Provided always, and be it further enacted, that no justice of the peace, being also a master manufacturer or agent, shall act as such justice under this Act.

Disputes may be adjusted by any other mode of arbitration upon which the parties may agree.

XIII. Provided always, and be it further enacted, that as well in all such cases of dispute as aforesaid as in all other cases, if the parties mutually agree that the matter in dispute shall be arbitrated and determined in a different mode to the one hereby prescribed, such agreement shall be valid, and the award and determination thereon final and conclusive between the parties; and the same proceedings of distress, sale, and imprisonment, as hereafter mentioned, shall be had towards enforcing such award (by application to any justice of the peace of the county, stewardry, riding, division, barony, city, town, burgh, or place within which the parties shall reside), as are by this Act prescribed for enforcing awards made under and by virtue of its provisions.

Partners, agents, and servants of masters to be considered principals.

XIV. Provided always, and be it further enacted, that where any work shall have been delivered to any workman by the agent or servant of any master or masters, to be when finished delivered to such agent or servant, and also where two or more persons shall carry on the business of such manufacture as partners, in every such case respectively the like proceedings shall and may be had and made against such agent, servant, or any partner, and shall be as effectual as if the same had been had and made against the principal or all the partners; and all the said persons respectively shall obey the award made thereupon, and all

such order or orders as shall be made by the said justice or justices in or respecting the matters in dispute, and shall be subject to the same proceedings and consequences for refusing or delaying to abide by or perform the same as if the proceedings had been had against the principal, or against all the partners.

XV. And be it further enacted, that it shall be lawful in all cases for any master or workman, by writing under his hand, to authorize any person to act for him in submitting to arbitration and attending arbitrators or justices touching the matter of any arbitration.

Masters not resident on the spot may depute another person to act for them.

XVI. Provided also, and be it further enacted, that in all cases where any proceedings may be had against a master or masters under this Act, or where such proceedings shall have been commenced, and the master or masters shall become or be bankrupt, or any assignment of his or their estate or effects shall have been made under the said bankruptcy, or otherwise by deed or in law, the factor or trustee upon or the assignee or assignees of such estate or effects shall be liable to the proceedings authorized by this Act against the master or masters, as fully as the master or masters was or were before the bankruptcy or assignment; and such proceedings may be commenced or carried on against such factor, trustee, assignee or assignees, who shall fulfil and abide by the award made thereupon, and all such order or orders as shall be made by the said justice or justices in or respecting the matters in dispute, and shall be subject to the same proceedings and consequences for wilfully refusing or delaying to abide by or perform the same as if the proceedings had been had against the master or masters before his or their bankruptcy, or the assignment of his or their estate or effects; provided that all sums of money to be paid in pursuance of such award or orders shall be recoverable only out of the estate or effects of such master or masters, and not out of the proper money of such factor, trustee, assignee or assignees.

Provision for the case of the master becoming bankrupt after proceedings commenced.

XVII. And be it further enacted, that where any married woman or infant under the age of twenty-one years shall have cause of complaint in any of the cases provided for by this Act against any master or masters, his or their agent or servant, or factor or trustee, or assignee or assignees as aforesaid, such complaint may be lodged and all further proceedings thereupon had by and in the name of the husband of such married woman, and of the father, or, if dead, of the mother, or, if on the death of both parents, of any of the kindred of any such infant, or of the surety or sureties in any indenture of apprenticeship of any such infant, being an apprentice, or of any person nominated by such infant, if he or she shall not have parent, kindred, or surety; and all such proceedings shall be as effectual, valid, and binding as if such married woman was sole, and such infants were of full age, and pursued by themselves the remedies provided by this Act.

In whose name proceedings shall be where the complainant is a married woman or infant.

XVIII. And be it further enacted, that with every piece of work given out by the manufacturer to a workman to be done there shall (if both parties are agreed) be delivered a note or ticket in such form as the said parties shall mutually agree upon; and which said note or ticket, in the event of dispute between the manufacturer and workman, shall be evidence of all matters and things mentioned therein or respecting the same.

Tickets of particulars shall be given out with the work.

XIX. And be it further enacted, that a duplicate of every such note or ticket shall be made and kept by the master or agent delivering the same, which duplicate shall be evidence of all the matters and things therein contained, in case the workman shall not produce to the arbitrators or the said justice, as the case may be, the said note or ticket so delivered to him with the said work.

Duplicates of such tickets.

XX. And be it further enacted, that it shall not be allowable to any manufacturer, who shall have received into his possession any article without objection made within twenty-four hours, by himself or his clerk or foreman, afterwards to make any complaint on account of work so received.

Manufacturers receiving Articles without objection not to complain afterwards.

XXI. Provided always, and be it further enacted, that if the parties by and between whom the said reference shall take place as aforesaid shall think it expedient or be desirous to extend the time hereby limited for the making the

Extension of the time limited for making the award.

Form of the award in schedule annexed.

On the award being fulfilled, the fulfilment shall be acknowledged.

The performance of the award may be enforced by distress, and failing that the party shall be imprisoned.

In certain cases the warrant of distress shall be withheld, and the defaulter committed to prison.

On payment of the sum awarded, with the costs and charges, the party shall be discharged from prison.

Warrant of commitment to be in form set forth in schedule.

No appeal or certiorari shall lie.

award or umpirage, it shall and may be lawful for them to extend the same accordingly, by endorsement, according to the form in the schedule hereunto annexed, on the back of the order of the justice of peace, certifying the appointment of the referees, to be signed by both of them in the presence of one or more credible witness or witnesses.

XXII. And be it further enacted, that the award or umpirage to be made upon any reference demanded under this Act shall and may be drawn up and written at the foot or upon the back of the said order, certifying the appointment of the referees, according to the form in the schedule hereunto annexed.

XXIII. And be it further enacted, that upon fulfilment of the award or umpirage the same shall be acknowledged by the party in whose behalf the same was made, by an acknowledgment at the foot of the said award, in the form of the schedule hereunto annexed, which with the award shall thereupon be delivered to the party fulfilling the same.

XXIV. And be it further enacted, that if any party shall refuse or delay to fulfil an award under this Act for the space or term of two days after the same shall have been reduced into writing, it shall be lawful for any such justice as aforesaid, on the application of the party aggrieved, and he is hereby required by warrant under his hand according to the form of the schedule hereunto annexed, or in some other form to the like effect, to cause the sum and sums of money directed to be paid by any such award to be levied by distress and sale of any goods and chattels of the person or persons liable to pay the same, together with all costs and charges attending such distress and sale, such sale to take place within such time not exceeding five days as the said justice shall think proper, and the overplus, if any, to arise by such sale, to be rendered to the owners of the goods and chattels distrained; and in case it shall appear by any return to such warrant that no sufficient distress can be readily had, which return may be in the form contained in the schedule hereunto annexed, or in some other form to the like effect, it shall be lawful for any such justice as aforesaid, and he is hereby required by warrant under his hand according to the form of the schedule hereunto annexed, or in some other form to the like effect, to commit the person or persons so liable as aforesaid to the common gaol, or some house of correction within his or their jurisdiction, there to remain without bail for any time not exceeding three months.

XXV. And whereas cases may occur where the recovery of such sum or sums of money by distress and sale of the goods and chattels of the defaulter may appear to the justice or justices of the peace by whom the warrant is to be issued to be attended with consequences ruinous or in an especial manner injurious to the defaulter and his family; to prevent which consequences, be it further enacted, that the said justice or justices in all such cases shall withhold such warrant, and commit the defaulter to the common gaol or some house of correction within his or their jurisdiction, there to remain without bail for any time not exceeding three months; such commitment to be in the form or to the effect of the form in the schedule to this Act annexed.

XXVI. And be it further enacted, that where any person shall be committed to prison for refusing or delaying to fulfil an award as aforesaid, and such person shall, at any time during the period of his or her imprisonment, pay to the governor or keeper of the prison the full amount of the sum awarded, with all reasonable expenses incurred through such refusal or delay, it shall be lawful for such governor or keeper of such prison, and he is hereby required, forthwith to discharge such person from his custody.

XXVII. And be it further enacted, that the justice or justices by whom any person or persons shall be committed to prison for not appearing as a witness, or not submitting to be examined, shall cause the warrant or order for such commitment to be drawn up in the form or to the effect set forth in the schedule to this Act.

XXVIII. And be it further enacted, that no appeal or certiorari shall lie against any proceedings under this Act.

XXIX. And be it further enacted, that no proceedings under this Act shall be invalid for want of form.

XXX. And be it further enacted, that the following and no higher fees shall be allowed to be taken for any proceeding under this Act; (that is to say)—

Proceedings
not invalid
for want of
form.

Fees to be
taken for
proceedings
under this
Act.

To the Clerk of the Justice or Justices:—

For each summons,	Twopence.
For every oath or affirmation,	Threepence.
For drawing and entering the order,	Fourpence.
For every warrant,	Sixpence.

To the Constable or other Peace Officer:—

For service of summons or order,	Fourpence.
For executing warrant of distress and sale of goods,	One shilling.
For custody of goods distrained, <i>per diem</i> ,	Threepence.
For every mile he shall travel,	Threepence.
For every caption,	Sixpence.

And a table of fees, signed by the clerk to such justice or justices, shall be hung up in every place where any General or Quarter Session, or Petty or other Sessions of the peace, shall be held.

XXXI. And be it further enacted, that all costs, time, and expenses attending the application to justices, to be made under this Act, and of the arbitration pursuant thereon, shall be settled by the arbitrators or arbitrator by whom such dispute shall be settled; and where the same shall be determined by any justice of the peace, pursuant to this Act, then the costs, time, and expenses aforesaid shall be settled by such justice; and where the arbitrators appointed as aforesaid cannot agree as to the costs, time, and expenses to be allowed, the same shall be settled by the justice or justices of the peace by whom the said arbitrators were named, and, in case of his absence or indisposition, by any justice of the peace for the same county, stewardry, riding, division, barony, city, burgh, liberty, town, or place nearest to the place at which the arbitrators met to settle the dispute: Provided always, that no master manufacturer, his foreman or agent, shall in any case be allowed for costs, time, or expenses, by the said justice or justices, unless it shall appear to him or them that the proceedings of the workmen were vexatious and oppressive.

Costs and
Expenses,
how to be
settled.

XXXII. Provided always, and be it enacted, that every agreement, submission, award, ticket, matter, or thing, under and by virtue of this Act, or relating to any other mode of arbitration as aforesaid, shall and may be drawn up and written upon unstamped paper.

Proceedings
exempt from
stamp duty.

XXXIII. Provided also, and be it further enacted, that no action shall be brought against any arbitrator, justice of the peace, constable, headborough, or other officer, or against any other person or persons whomsoever, for any matter or thing whatsoever done or committed under or by virtue or in the execution of this Act, unless such action shall be brought within six calendar months next after the doing or committing of such matter or thing.

Limitation
of time for
suing those
who act in
execution of
this Act.

XXXIV. Provided also, that if any action or suit shall hereafter be commenced or prosecuted against any person or persons for anything done under, by virtue, or in the execution of this Act, such person or persons may plead the general issue, and give this Act and the special matter in evidence; and if the plaintiff shall become nonsuited, or suffer discontinuance, or forbear further prosecution, or if judgment shall be given for the defendant or defendants, such defendant or defendants shall recover his, her, or their full costs, and for which he, she, or they shall have like remedy as in cases where costs by law are given to defendants.

Persons sued
for acting in
execution of
this Act
may plead
the general
issue.

XXXV. Provided always, and be it further enacted, that nothing in this Act contained shall extend or be construed to extend to repeal, abridge, annul, or

Not to
extend to
repeal any
Act not
hereby re-
pealed

make void any of the clauses, provisions, remedies, or powers contained in any law or statute now in force, and not repealed by this Act.

SCHEDULE.

Form of the Award to be written at the Foot or upon the Back of the Order of the Justices of the Peace certifying the Reference.

We, I. K. and L. M. [*name and describe the referees*], the referees appointed to settle the matters in dispute between the parties within named [*or, I. K., one of the referees so appointed; or, L. M., the other referees appointed having failed to attend; or, I. N. O., the justice, as the case may be*], do hereby adjudge and determine that [*here set forth the determination; to which the referee or referees, or justice, as the case may be, shall subscribe their names*].

Form of Endorsement, extending the Time limited for making the Award.

We, A. B. and C. D., parties to the within reference, do hereby agree to extend the same to the _____ day of

inclusive. Witness our hands this

day of

Witness,

A. B.

C. D.

Form of Acknowledgment of Fulfilment of the Award, to be written at the Foot or on the Back thereof.

I, A. B., do hereby acknowledge that the above award hath been fulfilled by C. D., who is hereby discharged of the same. Witness my hand this _____ day of

Witness,

A. B.

Form of the Oath to be administered by the Arbitrators or Justice to the Parties and Witnesses under this Act.

The evidence that you shall give before us, the arbitrators appointed by C. D. and C. D. [*the parties*] to determine the matters in difference between them, under and by virtue of an Act passed in the fifth year of the reign of King George the Fourth, intituled "An Act" (*state the title of this Act*), shall be the truth, the whole truth, and nothing but the truth.

So help you God.

Form of Commitment of a Person summoned as a Witness before the Arbitrators.

Whereas proof on oath hath been made before me, one of his Majesty's justices of the peace for the county [*or riding, stewartry, division, city, burgh, liberty, town, or place*] of _____ on this _____ day of _____ that A. B. hath been duly summoned, and hath neglected to appear and give evidence before C. D. and E. F., the arbitrators appointed by and between G. H. and I. K. to determine the matters in dispute between them at _____ in the county [*or riding, stewartry, division, city, burgh, liberty, town, or place*] of _____ on the _____ day of _____ under and by virtue of an Act made in the fifth year of the reign of his present Majesty, intituled "An Act" [*here set forth the title of this Act*], and the said A. B. being required by me the said justice to give evidence before the said arbitrators, and still refusing so to do, therefore I, the said justice, do hereby, in pursuance of the said Act, commit the said A. B. to the [*describing the prison and the house of correction*], there to remain without bail or mainprize for his [*or her*] offence aforesaid until he [*or she*] shall submit himself [*or herself*] to be examined, and give his [*or her*] evidence before the said arbitrators, touching the matters referred to them as aforesaid, or shall otherwise be discharged by due course of

[This commitment to be directed to the proper peace officer and the gaoler [or keeper] of the prison [or house of correction].

To the constable of
Whereas of under
an award made by on the day
of in the year of our Lord pursuant
to an Act passed in the fifth year of the reign of his present Majesty, intituled
"An Act" [*state the title of this Act*], is liable to pay to
of the sum of and also the
sum of and the said having
refused or neglected to pay the same for the space of two days and upwards
subsequent to the making such award, these are therefore to command you to
levy the said sum of by distress and sale of the goods
and chattels of the said ; and I do hereby order and
direct the goods and chattels so to be distrained to be sold and disposed of
within days, unless the said sum of
for which such distress shall be made, together with the reasonable charges of
taking and keeping such distress, shall be sooner paid; and you are also hereby
commanded to certify to me what you shall do by virtue of this my warrant.
Given under my hand and seal at the
day of

I, _____ constable of _____ do hereby
 certify to _____ justice of the peace of _____
 that I have made diligent search for, but do not know of, nor can find any goods
 and chattels of _____ by distress and sale whereof I may
 levy the sum of _____ pursuant to his warrant for that purpose.
 Dated the _____ day of _____ in the year of our
 Lord _____ . Given under my hand this _____ day
 of _____ in the year of our Lord _____

Here name the County. } To the constable of _____ and also to the
 } keeper of the house of correction at _____
 Whereas _____ of _____ under an award made by _____
 on the _____ day of _____ in the year of our Lord _____
 pursuant to an Act passed in the _____
 fifth year of the reign of his present Majesty, intituled "An Act" [*state the title of this Act*], became liable to pay to _____ the sum
 of _____ and also the sum of _____
 for costs, time, and expenses, making together the sum of _____
 and having refused or neglected to pay the same for the space of two days and
 upwards subsequent to the making of such award, my warrant was, according
 to the provisions of the said Act, duly made and issued for the levying the said
 sum of _____ by distress and sale of the goods and
 chattels of the said _____ : and whereas it appears by

Form of Commitment where the Warrant of Distress is withheld.

ANNO SEXTO GEORGII IV. REGIS.

An Act to repeal the Laws relating to the Combination of
Workmen, and to make other Provisions in lieu thereof.
[6th July, 1825.]

WHEREAS an Act was passed in the last session of Parliament, intituled "An Act to repeal the laws relative to the combination of workmen, and for other purposes therein mentioned," by which Act various statutes and parts of statutes relating to

combinations among workmen for fixing the wages of labour, and for regulating or controlling the mode of carrying on any manufacture, trade, or business, were repealed, and other provisions were made for protecting the free employment of capital and labour, and for punishing combinations interfering with such freedom, by means of violence, threats, or intimidation: and whereas the provisions of the said Act have not been found effectual: and whereas such combinations are injurious to trade and commerce, dangerous to the tranquillity of the country, and especially prejudicial to the interests of all who are concerned in them: and whereas it is expedient to make further provision, as well for the security and personal freedom of individual workmen in the disposal of their skill and labour, as for the security of the property and persons of masters and employers, and for that purpose to repeal the said Act, and to enact other provisions and regulations in lieu thereof: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the passing of this Act, the said recited Act of the last session of Parliament shall be and the same is hereby repealed.

II. Provided always, and be it enacted, that from and after the passing of this Act, so much of an Act made in the thirty-third year of the reign of King Edward the First, concerning conspirators who do confeder or bind themselves by oath, covenant, or other alliance, as relates or extends to combinations or conspiracies of workmen or other persons to obtain an advance of or to fix the rate of wages, or to lessen or alter the hours or duration of the time of working, or to decrease the quantity of work, or to regulate or control the mode of carrying on any manufacture, trade, or business, or the management thereof, or to combinations or conspiracies of masters, manufacturers, or other persons, to lower or fix the rate of wages, or to increase or alter the hours or duration of the time of working, or to increase the quantity of work, or to regulate or control the mode of carrying on any manufacture, trade, or business, or the management thereof, or to oblige workmen to enter into work; and also so much of a statute made in the third year of King Henry the Sixth, as relates to the annual congregations and confederacies made by masons in their general chapters assembled; and also a certain Act passed in the Parliament of Ireland, in the thirty-third year of King Henry the Eighth, intituled "An Act for servants' wages;" also a certain Act passed in the second and third years of King Edward the Sixth, intituled "an Act touching victuallers and handiworkmen;" and also a certain other Act passed in the Parliament of Scotland, in the fifth Parliament of King James the First of Scotland, intituled "of the fees of craftsmen, and the price of their worke;" also a certain other Act passed in the Parliament of Scotland, in the fifth Parliament of King James the First of Scotland, intituled "of the fees of workmen;" also a certain other Act passed in the Parliament of Scotland, in the fifth Parliament of King James the First of Scotland, intituled "of witches and masones;" also a certain other Act passed in the Parliament of Scotland, in the seventh Parliament of King James the First of Scotland, intituled "the price of ilk workmanship;" also a certain other Act passed in the Parliament of Scotland, in the fifth Parliament of Queen Mary of Scotland, intituled "the price of craftsmen's wark, of meate and drinke in tavernes;" also a certain other Act passed in the Parliament of Scotland, in the seventh Parliament of King James the Sixth of Scotland, intituled "anent the setting of ordour and price in all stiffe;" also so much of a certain other Act passed in the thirteenth and fourteenth years of King Charles the Second, intituled "An Act for regulating the trade of silk throwing" as provides and enacts, that the corporation of silk throwers should not, by virtue of that Act, nor anything therein contained, make any orders, ordinances, or bye laws, to set any rates or prices whatsoever upon the throwing of silk, to bind or enforce their members to work at; also a certain other Act passed in the seventh year of King George the First, intituled "An Act for regulating the journeymen tailors within the weekly bills of mortality," excepting so much thereof as relates to the recovery of wages, or to journeymen tailors or servants departing from their service, or refusing to enter into work

Recited Act repealed.

Certain Acts shall stand and remain repealed, viz. 33 Edw. I. so far as relates to combination of workmen.

3 Henry VI. c. 1.

33 Henry VIII. st. 1, c. 9 (I.)

2 & 3 Edw. VI. c. 15.

5 Parl. Jac. I. (S.)

7 Parl. Jac. I. (S.)

5 Parl. Mary (S.)

7 Parl. Jac. VI. (S.)

13 & 14 Charles II. c. 15, in part.

7 Geo. I. st. 1, c. 13, in part.

- or employment, as therein mentioned; also so much of an Act passed in the twelfth year of King George the First, intituled "An Act to prevent unlawful combinations of workmen employed in the woollen manufactures, and for better payment of their wages," as provides that contracts, covenants, or agreements, bye laws, ordinances, rules, and orders, made or entered into by or between persons brought up in, or professing, using, or exercising the art and mystery of a woolcomber or weaver, or journeyman woolcomber or journeyman weaver, as therein mentioned, shall be illegal, null, and void, and as punishes woolcombers, weavers, journeymen woolcombers and weavers, and other persons concerned in the woollen manufactures, for keeping up, continuing, acting in, making, entering into, signing, sealing, or being knowingly concerned in, presuming or attempting to put in execution such agreements, bye laws, ordinances, rules, or orders as therein mentioned, and as provides that the provisions of the said Act of the twelfth of George the First, just recited, shall extend to the persons therein mentioned; also so much of a certain other Act passed in the Parliament of Ireland, in the third year of King George the Second, intituled "An Act to prevent unlawful combinations of workmen, artificers, and labourers, employed in the several trades and manufactures of this kingdom, and for the better payment of their wages; as also to prevent abuses in making of bricks, and to ascertain their dimensions," as declares illegal, null, and void the contracts, covenants, agreements, bye laws, ordinances, rules, and orders therein mentioned, and makes it an offence to keep up, continue, act in, make, enter into, sign, seal, or be knowingly concerned therein, and to presume or attempt to put the same into execution, as therein mentioned; also so much of a certain other Act passed in the Parliament of Ireland, in the seventeenth year of King George the Second, intituled "An Act for continuing several statutes now near expiring, and for amending other statutes, and for other purposes therein mentioned," as declares the assemblies therein mentioned to be unlawful assemblies, the houses where they meet common nuisances, and punishes the master and mistress thereof, as likewise those who enter into the contracts, covenants, or articles therein mentioned, or collect or pay money for the support of persons as therein mentioned; also so much of a certain other Act passed in the twenty-second year of King George the Second, intituled "An Act for the more effectual preventing frauds and abuses committed by persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, and silk manufactures, and for preventing unlawful combinations of journeymen dyers and journeymen hotpressers, and of all persons employed in the said several manufactures, and for the better payment of their wages," as extends those provisions of the said Act of the twelfth George the First herein mentioned to the persons therein mentioned; also so much of a certain other Act passed in the twenty-ninth year of King George the Second, intituled "An Act to render more effectual an Act passed in the twelfth year of the reign of his late majesty King George, to prevent unlawful combinations of workmen employed in the woollen manufactures, and for better payment of their wages; and also an Act passed in the thirteenth year of the reign of his said late Majesty, for the better regulation of the woollen manufacture, and for preventing disputes among the persons concerned therein, and for limiting a time for prosecution for the forfeiture appointed by the aforesaid Act, in case of the payment of the workmen's wages in any other manner than in money," as relates to the making of rates for the payment of wages, continuing and altering and notifying them as therein mentioned; also so much of a certain other Act passed in the Parliament of Ireland, in the third year of King George the Third, intituled "An Act for continuing and amending certain temporary statutes heretofore made: for the better regulation of the city of Cork, and for enlarging the salary of the treasurer, and for the better regulating the sale of coals in the said city, and for erecting and continuing lamps in the same, and for the better preserving the streets and highways therein, and for confirming and establishing a court of conscience in the said city, and for regulating the assize of bread
- 12 Geo. I. c. 24, in part.
- 3 Geo. II. c. 14 (I.) in part.
- 17 Geo. II. c. 28 (I.) in part.
- 22 Geo. II. c. 27, in part.
- 20 Geo. II. c. 23, in part.
- 3 Geo. III. c. 17 (I.) in part.

therein, and for securing the quays by parapet walls," as relates to the assemblies and combinations of artificers, journeymen, apprentices, labourers, and manufacturers therein mentioned; also so much of a certain other Act passed in the Parliament of Ireland, in the third year of King George the Third, intituled "An Act for the better regulation of the linen and hempen manufactures," as relates to meeting in order to consult upon or enter into rules, agreements, or combinations to ascertain or fix the price of labour or workmanship, and as relates to administering oaths or declarations tending to fix the price of wages or workmanship, and as relates to issuing and delivering tickets, certificates, and tokens of parties being licensed to work, and as relates to rules, orders, and regulations relating to the price or wages of labour or workmanship, and as relates to oaths to enter into combinations or agreements to ascertain or fix the price of wages or workmanship, and to oaths and combinations not to work for a particular employer, as therein mentioned; also a certain other Act passed in the eighth year of King George the Third, intituled "An Act to amend an Act made in the seventh year of King George the First, intituled 'An Act for regulating the journeymen tailors within the weekly bills of mortality;'" also so much of a certain other Act, passed in the Parliament of Ireland in the eleventh and twelfth years of King George the Third, intituled "An Act for the regulation of the city of Cork, and for other purposes therein mentioned relative to the said city," as relates to the meetings and assemblies therein mentioned, the administering and taking oaths and declarations, to the tickets, certificates, advertisements, and writings, and to the rules, orders, agreements, and regulations, and to the combinations and agreements to ascertain or fix the price of wages, labour, or workmanship, or not to work, and as relates to the refusal or neglect, by persons not in actual service, to work on application made, and as relates to the detection and discovery of assemblies and combinations for any of the above recited purposes, and as relates to ascertaining wages as therein mentioned; also so much of a certain other Act, passed in the Parliament of Ireland in the eleventh and twelfth years of King George the Third, intituled "An Act for regulating the journeymen tailors and journeymen shipwrights of the city of Dublin, and the liberties thereof, and of the county of Dublin," as punishes those who permit the clubs and societies therein mentioned to be kept or held in their houses or apartments, and as makes the contracts, covenants, and agreements therein mentioned, and oaths to enforce them, illegal, and as punishes persons for keeping up, continuing, acting in, making, entering into, signing, sealing, or being knowingly interested or concerned in such contracts, covenants, or agreements, and as punishes persons not retained or employed for refusing to enter into work or employment on request made; as therein mentioned, and as regulates the hours of work and the rate of wages as therein mentioned; also so much of a certain other Act, passed in the thirteenth year of King George the Third, intituled "An Act to empower the magistrates therein mentioned to settle and regulate the wages of persons employed in the silk manufacture within their respective jurisdictions," as relates to settling, regulating, ordering and declaring the wages and prices of work, and the notification thereof, and makes it an offence to deviate from such settlement, regulation, order, and declaration, or to ask, receive, or take more or less wages or larger or less prices than shall be so settled, or to enter into combinations, or for that purpose to decoy or solicit, or to assemble, as therein mentioned, and as relates to the detection of such offences, and as makes it an offence to retain or employ journeymen weavers, out of the limits therein mentioned; or to give, allow, or pay, or cause to be given, allowed, or paid, more or less wages than shall be settled, as therein mentioned; also so much of a certain other act, passed in the seventeenth year of King George the Third, intituled "An Act for the better regulating the hat manufactory," as relates to the keeping up, acting in, making, entering into, signing, sealing, or being knowingly concerned in the contracts, covenants, or agreements, bye laws, ordinances, rules, or orders of the clubs, societies, or combinations therein mentioned, or the

3 Geo. III.
c. 84 (1.) in
part.

8 Geo. III.
c. 17.

11 & 12 Geo.
III. c. 18
(1.)

11 & 12 Geo.
III. c. 83
(1.) in part.

13 Geo. III.
c. 68, in
part.

17 Geo. III.
c. 55, in
part.

- presuming or attempting to put the agreements, bye laws, ordinances, rules, or orders in execution, or to the attending meetings, clubs, societies, or combinations, or to the summoning, giving notice to, or calling upon, collecting, demanding, or receiving, persuading, enticing, or inveigling, or endeavouring to persuade, entice, or inveigle, paying money, making or entering into subscriptions or contributions, as therein mentioned; also so much of a certain other Act, passed in the Parliament of Ireland in the nineteenth and twentieth years of King George the Third, intituled "An Act to prevent combinations, and for the further encouragement of trade," as declares that combinations in trade are public nuisances, and that the Acts therein enumerated shall be considered as evidences of unlawful combinations, and sufficient for the conviction of any person who shall be guilty of the same, and as avoids rules, bye laws, and regulations contrary to its provisions, and oaths for obeying or executing the same, and as provides for the case of an act of combination, for which no specific punishment is pointed out, as therein mentioned; also so much of a certain other Act, passed in the Parliament of Ireland in the nineteenth and twentieth years of King George the Third, intituled "An Act for the better regulation of the silk manufacture," as relates to the wages and prices for work, to combinations to raise wages, and the decoying or soliciting journeymen weavers, as therein mentioned; also so much of a certain other Act passed in the Parliament of Ireland in the nineteenth and twentieth years of King George the Third, intituled "An Act for regulating the curing and preparing provisions, and for preventing combinations among the several tradesmen and other persons employed in making up such provisions, and for regulating the butter trade in the city of Dublin, and for other purposes therein mentioned," as relates to summoning persons to appear at meetings and assemblies, and as relates to administering oaths or declarations, to the issuing and delivering of messages tickets, certificates, tokens, advertisements, or writings, to making or joining in making rules, orders, agreements, and regulations, as therein mentioned, and as relates to taking oaths, or entering into combinations or agreements to ascertain or fix the price of wages, or of labour or workmanship, or to make any rule, order, agreement, or regulation, and to taking oaths, and entering into combinations and agreements not to work for a particular person, as therein mentioned, and as relates to the fixing of wages; also so much of a certain other Act, passed in the Parliament of Ireland in the twenty-fifth year of King George the Third, intituled "An Act for granting the sums of twenty thousand pounds, five thousand pounds, and four thousand pounds, to certain trustees, and for promoting the several manufactures therein named," as relates to the ascertaining the rates of labour and prices of workmanship, as therein mentioned, and as requires an affidavit to be filed previous to the commencement of a suit as therein mentioned; also so much of a certain other Act, passed in the thirty-second year of King George the Third, intituled "An Act for extending the provisions of an Act made in the thirteenth year of the reign of his present Majesty, intituled 'An Act to empower the magistrates therein mentioned to settle and regulate the wages of persons employed in the silk manufacture within their respective jurisdictions,' to manufactories of silk mixed with other materials, and for the more effectual punishment of buyers and receivers of silk purloined and embezzled by persons employed in the manufacture thereof," as extend the provisions of the said Act of the thirteenth of George the Third, hereby repealed, to the persons therein mentioned; also a certain other Act, passed in the thirty-sixth year of King George the Third, intituled "An Act to prevent unlawful combinations of workmen employed in the paper manufactory;" also so much of a certain other Act passed in the thirty-ninth year of King George the Third, intituled "An Act to explain and amend the laws relative to colliers in that part of Great Britain called Scotland," as relates to the fixing and appointing of hire and wages; also an Act passed in the thirty-ninth and fortieth years of King George the Third, intituled "An Act to repeal an Act passed in the last session of Parliament, intituled 'An Act to prevent unlawful
- 19 & 20 Geo. III. c. 19 (I.) in part.
- 19 & 20 Geo. III. c. 24 (I.) in part.
- 19 & 20 Geo. III. c. 36 (I.) in part.
- 25 Geo. III. c. 48 (I.) in part.
- 32 Geo. III. c. 44, in part.
- 36 Geo. III. c. 111.
- 39 Geo. III. c. 56, in part.
- 39 & 40 Geo. III. c. 108, in part.

combinations of workmen,' and to substitute other provisions in lieu thereof," excepting so much thereof as relates to the adjustment of disputes between masters and workmen, as therein mentioned; also so much of a certain other Act passed in the forty-third year of King George the Third, intituled "An Act to prevent unlawful combinations of workmen, artificers, journeymen, and labourers, in Ireland, and for other purposes relating thereto," as makes illegal and void contracts, covenants, and agreements, for obtaining an advance of wages, or for lessening or altering the hours or time of working, or for decreasing the quantity of work, or for controlling or affecting the conduct or management of any manufacture, trade, or business, and as prohibits the making or entering into or being concerned in the same, and as punishes persons for so doing, and as relates to the combinations therein mentioned, and as relates to endeavouring by gift, persuasion, or solicitation to prevent persons hiring themselves, and as relates to attending the meetings therein mentioned, or endeavouring to induce the attendance of others, and collecting, demanding, asking, or receiving money for the purposes therein mentioned, and as relates to persuading, enticing, soliciting, or endeavouring to induce others to enter into or be concerned in the combinations therein mentioned, and to paying money, making or entering into subscriptions or contributions, and to oaths and declarations, and to tickets, certificates, and tokens, and to contributions, supporting and maintaining others, as therein mentioned, and as punishes persons for permitting assemblies in their houses or apartments as therein mentioned; also a certain other Act passed in the forty-seventh year of King George the Third, intituled "An Act to declare that the provisions of an Act, made in the Parliament of Ireland in the thirty-third year of King Henry the Eighth, relating to servants wages, shall extend to all counties of cities and counties of towns in Ireland;" also so much of a certain other Act passed in the fifty-seventh year of King George the Third, intituled "An Act to extend the provisions of an Act of the twelfth year of his late Majesty King George the First, and an Act of the twenty-second year of his late Majesty King George the Second, against payment of labourers in goods or by truck, and to secure their payment in the lawful money of this realm, to labourers employed in the collieries, or in the working and getting of coal, in the United Kingdom of Great Britain and Ireland, and for extending the provisions of the said Acts to Scotland and Ireland," as did extend to Scotland and Ireland any of the provisions of the Acts intended to be repealed by the said recited Act of the last session of Parliament; and all enactments in any other statutes or Acts which, immediately before the passing of the said recited Act of the last session of Parliament, were in force throughout or in any part of the United Kingdom of Great Britain and Ireland, relative to combinations to obtain an advance of wages, or to lessen or alter the hours or duration of the time of working, or to decrease the quantity of work, or to regulate or control the mode of carrying on any manufacture, trade, or business, or the management thereof, or relative to combinations to lower the rate of wages, or to increase or alter the hours or duration of the time of working, or to increase the quantity of work, or to regulate or control the mode of carrying on any manufacture, trade, or business, or the management thereof, or relative to fixing the amount of the wages of labour, or relative to the obliging workmen not hired to enter into work, and every enactment enforcing or extending the application of any of the said several enactments so repealed, shall, notwithstanding the repeal of the said recited Act of the last session of Parliament, still be and remain repealed, except only so far as the same or any of them may have repealed any former Act or enactment.

III. And be it further enacted, that from and after the passing of this Act, if any person shall by violence to the person or property, or by threats or intimidation, or by molesting or in any way obstructing another, force or endeavour to force any journeyman, manufacturer, workman, or other person hired or employed in any manufacture, trade, or business, to depart from his hiring, employment, or work, or to return his work before the same shall be finished,

48 Geo. III.
c. 88, in
part.

47 Geo. III.
s. 1, c. 43.

57 Geo. III.
c. 122, in
part.

And all Acts
relative to
combination
of workmen
or masters
as to wages,
time of
working, or
quantity of
work, &c.

Penalty on
persons
compelling
journeymen
to leave
their em-
ployment,
or to return

work unfinished; or preventing their hiring themselves; or compelling them to belong to clubs, &c.; or to pay any fines for not having complied with orders as to wages; or compelling any manufacturer, &c., to alter his mode of carrying on business. Imprisonment, or imprisonment with hard labour for three months. Not to affect meetings for settling rates of wages to be received, or hours of work to be employed by the persons meeting.

Not to affect meetings for rates of wages, &c., to be paid by masters to journeymen, &c.

Offenders compelled to give evidence.

Indemnified.

or prevent or endeavour to prevent any journeyman, manufacturer, workman, or other person not being hired or employed from hiring himself to, or from accepting work or employment from any person or persons; or if any person shall use or employ violence to the person or property of another, or threats or intimidation, or shall molest or in any way obstruct another for the purpose of forcing or inducing such person to belong to any club or association, or to contribute to any common fund, or to pay any fine or penalty, or on account of his not belonging to any particular club or association, or not having contributed or having refused to contribute to any common fund, or to pay any fine or penalty, or on account of his not having complied or of his refusing to comply with any rules, orders, resolutions, or regulations made to obtain an advance or to reduce the rate of wages, or to lessen or alter the hours of working, or to decrease or alter the quantity of work, or to regulate the mode of carrying on any manufacture, trade, or business, or the management thereof; or if any person shall by violence to the person or property of another, or by threats or intimidation, or by molesting or in any way obstructing another, force or endeavour to force any manufacturer or person carrying on any trade or business, to make any alteration in his mode of regulating, managing, conducting, or carrying on such manufacture, trade, or business, or to limit the number of his apprentices, or the number or description of his journeymen, workmen, or servants; every person so offending, or aiding, abetting, or assisting therein, being convicted thereof in manner hereinafter mentioned, shall be imprisoned only, or shall and may be imprisoned and kept to hard labour, for any time not exceeding three calendar months.

IV. Provided always, and be it enacted, that this Act shall not extend to subject any persons to punishment, who shall meet together for the sole purpose of consulting upon and determining the rate of wages or prices, which the persons present at such meeting, or any of them shall require or demand for his or their work, or the hours or time for which he or they shall work in any manufacture, trade, or business, or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices which the parties entering into such agreement, or any of them, shall require or demand for his or their work, or the hours or time for which he or they will work, in any manufacture, trade, or business; and that persons so meeting for the purposes aforesaid, or entering into any such agreement as aforesaid, shall not be liable to any prosecution or penalty for so doing; any law or statute to the contrary notwithstanding.

V. Provided also, and be it further enacted, that this Act shall not extend to subject any persons to punishment who shall meet together for the sole purpose of consulting upon and determining the rate of wages or prices which the persons present at such meeting, or any of them, shall pay to his or their journeymen, workmen, or servants, for their work, or the hours or time of working in any manufacture, trade, or business, or who shall enter into any agreement, verbal or written, among themselves, for the purpose of fixing the rate of wages or prices which the parties entering into such agreement, or any of them, shall pay to his or their journeymen, workmen, or servants, for their work, or the hours or time of working in any manufacture, trade or business; and that persons so meeting for the purposes aforesaid, or entering into any such agreement as aforesaid, shall not be liable to any prosecution or penalty for so doing, any law or statute to the contrary notwithstanding.

VI. And be it further enacted, that all and every persons and person who shall or may offend against this Act, shall and may, equally with all other persons, be called upon and compelled to give his or her testimony and evidence as a witness or witnesses on behalf of his Majesty, or of the prosecutor or informer, upon any information to be made or exhibited under this Act, against any other person or persons not being such witness or witnesses as aforesaid; and that in all such cases every person having given his or her testimony or evidence as aforesaid, shall be and is hereby indemnified of, from, and against any information to be laid, or prosecution to be commenced against him or her, for having

offended in the matter wherein or relative to which he, she, or they shall have given testimony or evidence as aforesaid.

VII. And for the more effectually enforcing and carrying into execution the provisions of this Act; be it further enacted, that on complaint and information on oath before any one or more justice or justices of the peace, of any offence having been committed against this Act, within his or their respective jurisdictions, and within six calendar months before such complaint or information shall be made, such justice or justices are hereby authorized and required to summon the person or persons charged with being an offender or offenders against this Act, to appear before any two such justices, at a certain time or place to be specified; and if any person or persons so summoned shall not appear according to such summons, then such justices (proof on oath having been first made before them of the due service of such summons upon such person or persons, by delivering the same to him or them personally, or leaving the same at his or their usual place of abode, provided the same shall be so left twenty-four hours at the least before the time which shall be appointed to attend the said justices upon such summons), shall make and issue their warrant or warrants for apprehending the person or persons so summoned, and not appearing as aforesaid, and bringing him or them before such justices; or it shall be lawful for such justices, if they shall think fit, without issuing any previous summons, and instead of issuing the same, upon such complaint and information as aforesaid, to make and issue their warrant or warrants for apprehending the person or persons by such information charged to have offended against this Act, and bringing him or them before such justices; and upon the person or persons complained against appearing upon such summons, or being brought by virtue of such warrant or warrants before such justices, or upon proof on oath of such person or persons absconding, so that such warrant or warrants cannot be executed, then such justices shall and they are hereby authorized and required forthwith to make inquiry touching the matters complained of, and to examine into the same by the oath or oaths of any one or more credible person or persons as shall be requisite, and to hear and determine the matter of every such complaint; and upon confession by the party, or proof by one or more credible witness or witnesses upon oath, to convict or acquit the party or parties against whom complaint shall have been made as aforesaid.

VIII. And be it further enacted, that it shall be lawful for the justices of the peace before whom any such complaint and information shall be made as aforesaid, and they are hereby authorized and required, at the request in writing of any of the parties, to issue his or their summons to any witness or witnesses to appear and give evidence before such justices, at the time and place appointed for hearing and determining such complaint, and which time and place shall be specified in such summons; and if any person or persons so summoned to appear as a witness or witnesses as aforesaid, shall not appear before such justices, at the time and place specified in such summons, or offer some reasonable excuse for the default, or appearing according to such summons, shall not submit to be examined as a witness or witnesses, and give his or their evidence before such justices, touching the matter of such complaint, then and in every such case it shall be lawful for such justices, and they are hereby authorized (proof on oath, in the case of any person not appearing according to such summons, having been first made before such justices of the peace, of the due service of such summons on every such person, by delivering the same to him or her, or by leaving the same twenty-four hours before the time appointed for such person to appear before such justices, at the usual place of abode of such person), by warrant under the hands of such justices, to commit such person or persons so making default in appearing, or appearing and refusing to give evidence, to some prison within the jurisdiction of such justices, there to remain without bail or mainprize, for three calendar months, or until such person or persons shall submit to be examined and give evidence before such justices as aforesaid.

IX. And be it further enacted, that the justices before whom any person or persons shall be convicted of any offence against this Act, or by whom any

Justices may summon offenders.

Not appearing, warrants may be issued.

On their appearance, or proof of absconding.

Proceedings.

Justices may summon witnesses.

Non-appearance, &c.

Proceedings.

Form of convictions

and commitments, set forth in schedule annexed.

Convictions to be transmitted to the next General or Quarter Sessions to be filed.

Proceedings under this Act in Scotland.

Persons thinking themselves aggrieved may appeal to the General or Quarter Sessions.

No master to act as justice.

person shall be committed to prison for not appearing as a witness, or not submitting to be examined, shall cause all such convictions, and the warrants or orders for such commitments, to be drawn up in the form or to the effect set forth in the schedule to this Act annexed.

X. And be it further enacted, that the justices before whom any such conviction shall be had, shall cause the same (drawn up in the form or to the effect hereinbefore directed) to be fairly written on parchment, and transmitted to the next General Sessions or General Quarter Sessions of the peace to be holden for the county, riding, division, city, liberty, town, or place wherein such conviction was had, to be filed amongst the records of the said General Sessions or General Quarter Sessions; and in case any person or persons shall appeal, in manner hereinafter mentioned, from the judgment of the said justices, to the said General Sessions or General Quarter Sessions, the justices in such General Sessions or General Quarter Sessions are hereby required, upon receiving such conviction, to proceed to the hearing and determination of the matter of the said appeal, according to the directions of this Act.

XI. Provided always, and be it enacted, that in Scotland all prosecutions under this Act may be insisted on at the instance of the public prosecutor, and may be judged of, either by two justices of the peace, or by the sheriff of the county within which the offence may have been committed.

XII. Provided always, and be it further enacted, that if any person convicted of any offence or offences punishable by this Act, shall think himself or herself aggrieved by the judgment of such justices, before whom he or she shall have been convicted, such person shall have liberty to appeal from every such conviction to the next court of General Sessions or General Quarter Sessions of the peace which shall be held for the county, riding, division, city, liberty, town, or place wherein such offence was committed; and that the execution of every judgment so appealed from shall be suspended, in case the person so convicted shall immediately enter into recognizances before such justices (which they are hereby authorized and required to take) himself in the penal sum of ten pounds, with two sufficient sureties in the penal sum of ten pounds of lawful money of Great Britain, upon condition to prosecute such appeal with effect, and to be forthcoming to abide the judgment and determination of the said next General Sessions or General Quarter Sessions, and to pay such costs as the said court shall award on such occasion; and the justices in the said next court of General Sessions or General Quarter Sessions are hereby authorized and required to hear and determine the matter of the said appeal, and to award such costs as to them shall appear just and reasonable, to be paid by either party, which decision shall be final; and if upon hearing the said appeal, the judgment of the justices before whom the appellant shall have been convicted shall be affirmed, such appellant shall immediately be committed by the said court to the common gaol or house of correction, without bail or mainprize, according to such conviction, and for the space of time therein mentioned.

XIII. Provided also, and be it further enacted, that no justice of the peace, being also a master in the particular trade or manufacture, in or concerning which any offence is charged to have been committed under this Act, shall act as such justice under this Act.

SCHEDULE TO WHICH THIS ACT REFERS.

Form of Conviction and Commitment.

Be it remembered, that on the day of in the year of his Majesty's reign, and in the year of our Lord A. B. is convicted before us [*naming the justices*] two of his Majesty's justices of the peace for the county [*or riding, division, city, liberty, town, or place*] of of having [*stating the offence*] contrary to the Act made in the sixth year of the reign of King George the Fourth, intituled "An Act" [*Here set forth the title of this Act*]; and we the said justices do hereby order and adjudge the said A. B.

for the said offence to be committed to and confined in the common gaol for the said county [or riding, division, city, liberty, town, or place] for the space of or to be committed to the house of correction at within the said county [or riding, division, city, liberty, town, or place], there to be kept to hard labour for the space of . Given under our hands, the day and year above written.

Form of Commitment of a Person summoned as a witness.

Whereas C.D. hath been duly summoned to appear and give evidence before us [naming the justices who issued the summons] two of his Majesty's justices of the peace for the county [or riding, division, city, liberty, town, or place], of on this day of at being the time and place appointed for hearing and determining the complaint made by [the informer or prosecutor] before us, against A.B. of having [stating the offence as laid in the information] contrary to the Act made in the sixth year of the reign of King George the Fourth, intituled an Act [here insert the title of this Act]; and whereas the said C.D. hath not appeared before us, at the time and place aforesaid, specified for that purpose, or offered any reasonable excuse for his [or her] default, [or, And whereas the said C.D. having appeared before us, at the time and place aforesaid, specified for that purpose, hath not submitted to be examined as a witness, and give his [or her] evidence before us touching the matter of the said complaint, but hath refused so to do]; therefore we, the said justices, do hereby in pursuance of the said statute commit the said C.D. to the [describing the prison], there to remain without bail or mainprize, for his [or her] contempt aforesaid, for three calendar months, or until he [or she] shall submit himself [or herself] to be examined, and give his [or her] evidence before us, touching the matter of the said complaint, or shall otherwise be discharged by due course of law: And you the [constable or other peace officer or officers to whom the warrant is directed] are hereby authorized and required to take into your custody the body of the said C.D. and him [or her] safely to convey to the said prison, and him [or her] there to deliver to the gaoler or keeper thereof, who is hereby authorized and required to receive into his custody the body of the said C.D. and him [or her] safely to detain and keep, pursuant to this commitment. Given under our hands, this day of in the year of our Lord

[This commitment to be directed to the proper peace officer, and the gaoler or keeper of the prison.]

ANNO PRIMO ET SECUNDO GULIELMI IV. REGIS.

CAP. XXXVII.

AN Act to prohibit the Payment, in certain Trades, of Wages in Goods, or otherwise than in the current Coin of the Realm.
[15th October, 1831.]

WHEREAS it is necessary to prohibit the payment, in certain trades, of wages in goods, or otherwise than in the current coin of the realm: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that in all contracts hereafter to be made for the hiring of any artificer in any of the trades hereinafter enumerated, or for the performance by any artificer of any labour in any of the said trades, the wages of such artificer shall be made payable in the current coin

Contracts for the hiring of artificers must be made in the current coin of the realm;

of this realm only, and not otherwise; and that if in any such contract the whole or any part of such wages shall be made payable in any manner other than in the current coin aforesaid, such contract shall be and is hereby declared illegal, null, and void.

and must not contain any stipulations as to the manner in which the wages shall be expended.

II. And be it further enacted, that if in any contract hereafter to be made between any artificer in any of the trades hereinafter enumerated, and his employer, any provision shall be made directly or indirectly respecting the place where, or the manner in which, or the person or persons with whom, the whole or any part of the wages due or to become due to any such artificer shall be laid out or expended, such contract shall be and is hereby declared illegal, null, and void.

All wages must be paid to the workman in coin.

Payment in goods declared illegal.

III. And be it further enacted, that the entire amount of the wages earned by or payable to any artificer in any of the trades hereinafter enumerated, in respect of any labour by him done in any such trade, shall be actually paid to such artificer in the current coin of this realm, and not otherwise; and every payment made to any such artificer by his employer, of or in respect of any such wages, by the delivering to him of goods or otherwise than in the current coin aforesaid, except as hereinafter mentioned, shall be and is hereby declared illegal, null, and void.

Artificers may recover wages, if not paid in the current coin.

IV. And be it further enacted, that every artificer in any of the trades hereinafter enumerated shall be entitled to recover from his employer in any such trade, in the manner by law provided for the recovery of servants' wages, or by any other lawful ways and means, the whole or so much of the wages earned by such artificer in such trade as shall not have been actually paid to him by such his employer in the current coin of this realm.

In an action brought for wages no set-off shall be allowed for goods supplied by the employer, or by any shop in which the employer is interested.

V. And be it further enacted, that in any action, suit, or other proceeding to be hereafter brought or commenced by any such artificer as aforesaid, against his employer, for the recovery of any sum of money due to any such artificer as the wages of his labour in any of the trades hereinafter enumerated, the defendant shall not be allowed to make any set-off, nor to claim any reduction of the plaintiff's demand, by reason or in respect of any goods, wares, or merchandise had or received by the plaintiff as or on account of his wages or in reward for his labour, or by reason or in respect of any goods, wares, or merchandise sold, delivered, or supplied to such artificer at any shop or warehouse kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest.

No employer shall have any action against his artificer for goods supplied to him on account of wages.

VI. And be it further enacted, that no employer of any artificer in any of the trades hereinafter enumerated shall have or be entitled to maintain any suit or action in any court of law or equity against any such artificer, for or in respect of any goods, wares, or merchandise, sold, delivered, or supplied to any such artificer by any such employer, whilst in his employment, as or on account of his wages or reward for his labour, or for or in respect of any goods, wares, or merchandise sold, delivered, or supplied to such artificer at any shop or warehouse kept by or belonging to such employer, or in the profits of which such employer shall have any share or interest.

If the artificer or his wife or children become chargeable to the parish, the overseers may recover any wages earned within the three preceding months, and not paid in cash.

VII. And be it further enacted, that if any such artificer as aforesaid, or his wife or widow, or if any child of any such artificer, not being of the full age of twenty-one years, shall become chargeable to any parish or place, and if within the space of three calendar months next before the time when any such charge shall be incurred such artificer shall have earned or have become entitled to receive any wages for any labour by him done in any of the said trades, which wages shall not have been paid to such artificer in the current coin of this realm, it shall be lawful for the overseers or overseer of the poor in such parish or place to recover from the employer of such artificer in whose service such labour was done the full amount of wages so unpaid, and to proceed for the recovery thereof by all such ways and means as such artificer himself might have proceeded for that purpose; and the amount of the wages which may be so recovered shall be applied in reimbursing such parish or place all costs and

charges incurred in respect of the person or persons to become chargeable, and the surplus shall be applied and paid over to such person or persons.

VIII. Provided always, and be it further enacted, that nothing herein contained shall be construed to prevent or to render invalid any contract for the payment, or any actual payment, to any such artificer as aforesaid, of the whole or any part of his wages, either in the notes of the Governor and Company of the Bank of England, or in the notes of any person or persons carrying on the business of a banker, and duly licensed to issue such notes in pursuance of the laws relating to his Majesty's Revenue of Stamps, or in drafts or orders for the payment of money to the bearer on demand, drawn upon any person or persons carrying on the business of a banker, being duly licensed as aforesaid, within fifteen miles of the place where such drafts or orders shall be so paid, if such artificer shall be freely consenting to receive such drafts or orders as aforesaid, but all payments so made with such consent as aforesaid, in any such notes, drafts, or orders, as aforesaid, shall for the purposes of this Act be as valid and effectual as if such payments had been made in the current coin of the realm.

Not to invalidate the payment of wages in bank notes if artificer consents.

IX. And be it further enacted, that any employer of any artificer in any of the trades hereinafter enumerated, who shall, by himself or by the agency of any other person or persons, directly or indirectly enter into any contract or make any payment hereby declared illegal, shall for the first offence forfeit a sum not exceeding ten pounds nor less than five pounds, and for the second offence any sum not exceeding twenty pounds nor less than ten pounds, and in case of a third offence any such employer shall be and be deemed guilty of a misdemeanor, and, being thereof convicted, shall be punished by fine only, at the discretion of the court, so that the fines shall not in any case exceed the sum of one hundred pounds.

Penalties on employers entering into contracts hereby declared illegal.

X. And be it further enacted, that all offences committed against this Act, and not hereinbefore declared a misdemeanor, shall be inquired of and determined, and that all fines and penalties for such offences shall be sued for and recovered, by any person or persons who shall sue for the same, before any two justices of the peace having jurisdiction within the county, riding, city, or place in which the offence shall have been committed; and that the amount of the fines, penalties, and other punishments to be inflicted upon any such offenders shall, within the limits hereinbefore prescribed, be in the discretion of such justices, or, in cases of misdemeanor, of the court before which the offence may be tried; and in case of a second offence against this Act it shall be sufficient evidence of the previous conviction and offence, if a certificate, signed by the clerk of the peace or other officer having the custody of the record of such previous conviction, shall be produced before the said justices inquiring of such second offence, in which certificate shall be stated in a compendious form the general nature of the offence for which such previous conviction was had, and the date of such previous conviction; and so, in like manner, upon the trial of any indictment or information for any such misdemeanor as aforesaid, it shall be sufficient evidence of such second conviction for a like offence if a certificate thereof, signed by the clerk of the peace or other officer having the custody of the record of such second conviction, in such form as aforesaid, be produced to the court and jury: Provided always, that no person shall be punished as for a second offence under this Act unless ten days at the least shall have intervened between the conviction of such person for the first and the conviction by such person of the second offence, but each separate offence committed by any such person before the expiration of the said term of ten days shall be punishable by a separate penalty, as though the same were a first offence; and that no person shall be punished as for a third offence under this Act, unless ten days at the least shall have intervened between the conviction of such person for the second and the conviction by such person of the third offence; but each separate offence committed by any such person before the expiration of the said term of ten days shall be punishable by a separate penalty, as though the same were a second offence; and that the fourth or any subsequent offence which may be committed

Penalties how to be recovered

Second offence.

Proviso.

by any such person against this Act shall be inquired of, tried, and punished in the manner hereinbefore provided in respect of any third offence; and that if the person or persons preferring any such information shall not be able or shall not see fit to produce evidence of any such previous conviction or convictions as aforesaid, any such offender as aforesaid shall be punished for each separate offence by him committed against the provisions of this Act by an equal number of distinct and separate penalties, as though each of such offences were a first or a second offence, as the case may be; and that no person shall be proceeded against or punished as for a second or as for a third offence at the distance of more than two years from the commission of the next preceding offence.

Justices may compel the attendance of witnesses.

XI. And be it further enacted, that it shall be lawful for any one justice of the peace, in all cases where any information or complaint shall be made as aforesaid, and he is hereby authorized and required, at the request in writing of any of the parties to the said complaint, and on the oath of the informer or complainant, or of the person informed or complained against, that he believes that the attendance of any person or persons as a witness or witnesses will be material to the hearing of such information, to issue his summons to any such person or persons, witness or witnesses, to appear and give evidence on oath before himself and such other justice or justices as shall hear and determine such information or complaint, the time and place of hearing and determining the same being specified in the said summons; and if any person or persons so summoned shall not appear before the said last-mentioned justices at the time or place so specified in the said summons, and shall not offer any reasonable excuse for the default, to the satisfaction of the said last-mentioned justices, or appearing according to the directions of the said summons shall not submit to be examined as a witness or witnesses, then, and in every such case, it shall be lawful for such last-mentioned justices, and they are hereby authorized (proof on oath, in the case of any person not appearing according to such summons, having been first made before such last-mentioned justices of the due service of such summons on every such person, by delivering the same to him or to her, or by leaving the same at the usual place of abode of such person, twenty-four hours at the least before the time appointed for such person to appear before such last-mentioned justices), by warrant under the hands and seals of such last-mentioned justices, to commit such person or persons so making default in appearing, or appearing and refusing to give evidence, to some prison within the jurisdiction of the said justices, there to remain, without bail or mainprize, for any time not exceeding fourteen days, or until such person or persons shall submit to be examined and give evidence.

Power to levy penalties by distress.

XII. And be it further enacted, that all justices of the peace shall, and are hereby empowered, on the conviction of any person or persons for any offence against this Act, in default of payment of any penalty or forfeiture, together with the reasonable costs and charges attending such conviction, to cause the same to be levied by distress and sale of the goods and chattels of the offender or offenders, by warrant or warrants under the hands and seals of such justices, together with the reasonable costs of such distress and sale; and in case it shall appear to the satisfaction of such justices, either by the confession of the offender or offenders, or by the oath of one or more credible witness or witnesses, that he, she, or they hath not or have not goods and chattels within the jurisdiction of such justices sufficient whereon to levy all such penalties and forfeitures, costs and charges, such justices may, without issuing any warrant of distress, commit the offender or offenders to the common gaol for three calendar months (unless the same be sooner paid), in such manner as if a warrant of distress had been issued, and a return of *nulla bona* made thereon.

A partner not to be liable in person for the offence of his co-partner, but the partner-

XIII. And be it further enacted, that no person shall be liable to be convicted of any offence against this Act committed by his or her copartner in trade, and without his or her knowledge, privity, or consent; but it shall be lawful, when any penalty, or any sum for wages, or any other sum, is ordered to be paid, under the authority of this Act, and the person or persons ordered to pay the same shall neglect or refuse to do so, to levy the same by distress and sale of

any goods belonging to any copartnership concern or business in the carrying on ship property to be of which such charges may have become due, or such offence may have been committed; and in all proceedings under this Act to recover any sum due so liable. for wages it shall be lawful in all cases of copartnership for the justices, at the hearing of any complaint for the nonpayment thereof, to make an order upon any one or more copartners for the payment of the sum appearing to be due; and in such case the service of a copy of any summons or other process, or of any order, upon one or more of such copartners, shall be deemed to be a sufficient service upon all.

XIV. And it is declared and enacted, that in all cases it shall be deemed and taken to be sufficient service of any summons to be issued against any offender or offenders by any justice or justices of the peace, under the authority of this Act, if a duplicate or true copy of the same be left at or upon the place used or occupied by such offender or offenders for carrying on his, her, or their trade or business, or at the place of residence of any such offender or offenders, being at or upon any such place as aforesaid, the same being directed to such offender or offenders by his, her, or their right or assumed name or names. How summonses are to be served.

XV. And be it further enacted, that the justices before whom any person shall be convicted of any offence against this Act, or by whom any person shall be committed to the common gaol, in default of a sufficient distress, or for not appearing as a witness, or not submitting to be examined, shall cause all such convictions, and the summonses for the attendance of witnesses, and the warrants or orders for such commitments, and the warrant or order for any such distress, to be drawn up in the form or to the effect set forth in the schedule to this Act annexed, with such additions or variations as may be necessary for adapting the same to the particular circumstances of the case. Form of conviction, &c.

XVI. And be it further enacted, that the justices before whom any conviction shall be had under this Act shall cause the same to be returned to the next General or Quarter Sessions of the peace holden for the county or place wherein the offence shall have been committed, and the same shall then and there be delivered to the clerk of the peace, or other person acting as such, to be by him filed among the records of the said court; and such clerk of the peace, or other person acting as such, is hereby required, on the tender and payment to him of the sum of one shilling, to grant to any person or persons, on demand, a copy of any such conviction, with a certificate thereupon indorsed or thereunto annexed, that the same is a true and accurate copy of the original conviction returned to such General or Quarter Sessions as aforesaid. Justices to return convictions to the clerk of the peace, who is to deliver copies to persons applying.

XVII. And be it further enacted, that no conviction, order, or adjudication made by any justices of the peace under the provisions of this Act shall be quashed for want of form, nor be removed by certiorari or otherwise into any of his Majesty's superior courts of record; and no warrant of distress, or of commitments in default of sufficient distress, shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same. Convictions not to be quashed for want of form.

XVIII. And be it further enacted, that out of any penalty or forfeiture incurred by any offence committed against this Act it shall be lawful for the court or justices imposing the same to award any sum to the informer, not exceeding in any case the sum of twenty pounds; and the rest of any such pecuniary penalty or forfeiture shall go to the treasurer of the county in which the offence shall be committed, in aid of the rates of such county: Provided always, that every proceeding whatsoever for any offence against this Act shall be commenced within three calendar months after such offence shall have been committed. Application of penalties.

XIX. And be it further enacted, that nothing herein contained shall extend to any artificer, workman, or labourer, or other person engaged or employed in any manufacture, trade, or occupation, excepting only artificers, workmen, labourers, and other persons employed in the several manufactures, trades, and occupations following; (that is to say), in or about the making, casting, con- Specification of the trades to which the Act is to apply.

verting, or manufacturing of iron or steel, or any parts, branches, or processes thereof; or in or about the working or getting of any mines of coal, ironstone, limestone, salt rock; or in or about the working or getting of stone, slate, or clay; or in the making or preparing of salt, bricks, tiles, or quarries; or in or about the making or manufacturing of any kinds of nails, chains, rivets, anvils, vices, spades, shovels, screws, keys, locks, bolts, hinges, or any other articles or hardwares made of iron or steel, or of iron and steel combined, or of any plated articles of cutlery, or of any goods or wares made of brass, tin, lead, pewter, or other metal, or of any japanned goods or wares whatsoever; or in or about the making, spinning, throwing, twisting, doubling, winding, weaving, combing, knitting, bleaching, dyeing, printing, or otherwise preparing of any kinds of woollen, worsted, yarn, stuff, jersey, linen, fustian, cloth, serge, cotton, leather, fur, hemp, flax, mohair, or silk manufactures whatsoever, or in or about any manufactures whatsoever made of the said last-mentioned materials, whether the same be or be not mixed one with another; or in or about the making or otherwise preparing, ornamenting, or finishing of any glass, porcelain, china, or earthenware whatsoever, or any parts, branches, or processes thereof, or any materials used in any of such last-mentioned trades or employments; or in or about the making or preparing of bone, thread, silk, or cotton lace, or of lace made of any mixed materials.

Domestics.

XX. And be it further enacted, that nothing herein contained shall extend to any domestic servant or servant in husbandry.

Certain persons not to act as justices.

XXI. And be it further enacted, that no justice of the peace, being a person also engaged in any of the trades or occupations enumerated in this Act, or the father, son, or brother of any such person, shall act as a justice of the peace under this Act.

County magistrates to act in cases where those of towns, &c., are disqualified as above.

XXII. And be it further enacted, that in all cities, boroughs, or corporate towns, where the magistrates for the time being are disqualified by the foregoing clause from administering this Act, then and in every such case, and so often as the same shall happen, it shall be lawful for the magistrates of the county in which the offence may be committed (and not disqualified as aforesaid) to administer, and they are hereby authorized and empowered to hear, examine, and determine, any offences committed against this Act, in any such cities, boroughs, or corporate towns; and it shall be lawful for the complainant to remove the cases of information or complaint from the said cities, boroughs, or corporate towns to any other Court of Session or Petty Session not exceeding twelve miles from the place where the offence shall have been committed, any law, charter, usage, or custom to the contrary notwithstanding.

Particular exceptions to the generality of the law.

XXIII. And be it further enacted and declared, that nothing herein contained shall extend or be construed to extend to prevent any employer of any artificer, or agent of any such employer, from supplying or contracting to supply to any such artificer any medicine or medical attendance, or any fuel, or any materials, tools, or implements to be by such artificer employed in his trade or occupation, if such artificers be employed in mining, or any hay, corn, or other provender to be consumed by any horse or other beast of burden employed by any such artificer in his trade and occupation; nor from demising to any artificer, workman, or labourer employed in any of the trades or occupations enumerated in this Act the whole or any part of any tenement at any rent to be thereon reserved; nor from supplying or contracting to supply to any such artificer any victuals dressed or prepared under the roof of any such employer, and there consumed by such artificer; nor from making or contracting to make any stoppage or deduction from the wages of any such artificer for or in respect of any such rent; or for or in respect of any such medicine or medical attendance; or for or in respect of such fuel, materials, tools, implements, hay, corn, or provender, or of any such victuals dressed and prepared under the roof of any such employer; or for or in respect of any money advanced to such artificer for any such purpose as aforesaid: Provided always, that such stoppage or deduction shall not exceed the real and true value of such fuel, materials, tools, implements, hay, corn, and

provender, and shall not be in any case made from the wages of such artificer, unless the agreement or contract for such stoppage or deduction shall be in writing, and signed by such artificer.

XXIV. And be it further enacted and declared, that nothing herein contained shall extend or be construed to extend to prevent any such employer from advancing to any such artificer any money to be by him contributed to any friendly society or bank for savings duly established according to law, nor from advancing to any such artificer any money for his relief in sickness, or for the education of any child or children of such artificer, nor from deducting or contracting to deduct any sum or sums of money from the wages of such artificers for the education of any such child or children of such artificer, and unless the agreement or contract for such deduction shall be in writing, and signed by such artificer.

Employers may advance money to artificers for certain purposes.

XXV. And be it further enacted and declared, that in the meaning and for the purposes of this Act all workmen, labourers, and other persons in any manner engaged in the performance of any work, employment, or operation, of what nature soever, in or about the several trades and occupations aforesaid, shall be and be deemed "artificers;" and that within the meaning and for the purposes aforesaid all masters, bailiffs, foremen, managers, clerks, and other persons engaged in the hiring, employment, or superintendence of the labour of any such artificers, shall be and be deemed to be "employers;" and that within the meaning and for the purposes of this Act any money or other thing had or contracted to be paid, delivered, or given as a recompence, reward, or remuneration for any labour done or to be done, whether within a certain time or to a certain amount, or for a time or an amount uncertain, shall be deemed and taken to be the "wages" of such labour; and that within the meaning and for the purposes aforesaid any agreement, understanding, device, contrivance, collusion, or arrangement whatsoever on the subject of wages, whether written or oral, whether direct or indirect, to which the employer and artificer are parties or are assenting, or by which they are mutually bound to each other, or whereby either of them shall have endeavoured to impose an obligation on the other of them, shall be and be deemed a "contract."

Definition of terms.

XXVI. And be it further enacted, that this Act shall not commence or take effect till the expiration of three calendar months next after the day of passing the same.

Commencement of Act.

XXVII. And be it further enacted, that the provisions of this Act shall extend over the whole of that part of the United Kingdom of Great Britain and Ireland called Great Britain.

To extend over Great Britain.

SCHEDULE REFERRED TO IN THE FOREGOING ACT.

Form of Conviction.

to wit. } Be it remembered, that on this day of in
 } the year of our Lord , at in the county of
 } , A.B. is duly convicted before us, C.D. and J.G., two of his
Majesty's justices of the peace for the of , for that
the said A.B. [specify the offence, and the time and place when and where committed],
whereby the said A.B. has forfeited the sum of , this being
adjudged to be the first [or second] offence [as the case may be] against the pro-
visions of an Act to prohibit the payment of wages in goods, besides the costs of
this conviction, which we assess at the sum of [here state to whom
and in what proportions the penalty and costs are to be paid], pursuant to the
statute in that case provided.

Given under our hands and seals.

Summons to Witness.

to wit. } Whereas information upon oath hath been made before me, A.B.,
 } Esquire, one of his Majesty's justices of the peace for the county

aforesaid, that C.D. of _____ has been guilty of an offence against the laws prohibiting the payment of wages in goods, and that you are a material witness to be examined on the hearing and determination of such information; these are therefore to require you to appear personally before me, and such other justice or justices as shall hear and determine such information, at _____ in the county aforesaid, on the _____ day of _____, at the hour of _____ of the same day, there to be examined touching the matters alleged in such information. As witness my hand,

Warrant of Commitment of a Witness.

} To the constable or other proper officer and to the keeper or gaoler to wit. } of _____

Whereas C.D. hath been duly summoned to appear and give evidence before us, A.O. and G.F., two of his Majesty's justices of the peace for the county [or riding, city, division, or place] of _____, on this _____ day of _____ being the time and place appointed for hearing and determining the complaint made on the oath of _____ before us, against A.B. of having [stating the offence as laid in the information] contrary to the laws now in force for prohibiting the payment of wages in goods: And whereas the said C.D. hath not appeared before us at the time and place aforesaid specified for that purpose, or offered any reasonable excuse for his default [or _____]: And whereas the said C.D., having appeared before us at the time and place aforesaid specified for that purpose, hath not submitted to be examined as a witness and give his evidence before us touching the matter of the said complaint, but hath refused so to do [or _____]; therefore we the said justices do hereby, in pursuance of the statute made, &c. [setting forth the title of this Act] commit the said C.D. to the [describing the prison] there to remain, without bail or mainprize, for his contempt aforesaid, for the space of three calendar months, or until he shall submit himself to be examined and give his evidence touching the matter of the said complaint, or shall otherwise be discharged by due course of law. And you [the constable or peace officer to whom the warrant is directed] are hereby authorized and required to take into your custody the body of the said C.D., and him safely to convey to the said prison, and him there to deliver to the gaoler or keeper thereof, who is hereby authorized and required to receive into his custody the body of the said C.D., and him safely to retain and keep pursuant to this commitment. Given under our hands and seals, this _____ day of _____ in the year of our Lord _____.

Warrant to distrain for Forfeiture.

} To the constable [headborough] or [tythingman] of to wit. }

Whereas A.B. of _____ is this day convicted before us, C.D. and J.G., two of his Majesty's justices of the peace in and for the said county, upon oath of H.K., a credible witness, for that the said A.B. did [here set forth the offence], contrary to the statute in that case made and provided, by reason whereof the said A.B. hath forfeited the sum of _____ to be distributed as herein is mentioned, besides the sum of _____ for costs, both of which he hath refused to pay; these are therefore, in his Majesty's name, to command you to levy the said sum of _____ and also the sum of _____ for costs, by distress of the goods and chattels of him the said A.B.; and if within the space of _____ days next after such distress by you taken, the said sums, together with the reasonable charges of taking and keeping the same, shall not be paid, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale that you do retain the said costs, and also the said forfeiture or sum of _____, and thereout pay to L.M., who hath informed and prosecuted in this case, the sum of _____ being his adjudged portion of such forfeiture, the residue whereof is to go to the treasurer

of the said county of _____, in aid of the rates thereof; and that you do return the overplus, on demand, to him the said A.B. (the reasonable charges of taking, keeping, and selling the said distress being first deducted); and if sufficient distress cannot be found of the goods and chattels of the said A.B. whereon to levy the said sum of _____, that then you certify the same to us, together with this warrant.

Given under our hands and seals,

Commitment for Want of Distress.

} To the [constable] of _____ in the said county and to the
to wit. } keeper of the common gaol [or the house of correction] at
in the said county.

Whereas A.B. of _____ in the said county was on the
day of _____ convicted before us, C.D. and J.G., two of his Majesty's
justices of the peace in and for the said county, upon the oath of H.K., a credible
witness, for that he the said A.B. [*here set forth the offence*], contrary to the
statute made in the _____ year of the reign of his Majesty King William
the Fourth, by reason whereof the said A.B. hath forfeited the sum of _____

besides the sum of _____ for costs: And whereas on the
day of _____ in the year aforesaid we did issue our warrant to the
[constable] of _____ to levy the said sum of _____ and costs, by
distress and sale of the goods and chattels of him the said A.B., and to distribute
the same according to the directions of the said statute: And whereas it duly
appears to us, upon the oath of the said [constable], that the said [constable]
hath used his best endeavours to levy the said sum on the goods and chattels of
the said A.B. as aforesaid, but that no sufficient distress can be had whereon to
levy the same [or by confession of the said A.B., or by the oath of a credible
witness, that the said A.B. hath not goods and chattels within our jurisdiction
whereon to levy the said forfeiture and costs]; these are therefore to command
you the said [constable] of _____ aforesaid to apprehend the said A.B.
and him safely to convey to the common gaol [or house of correction] at _____

in the said county, and there to deliver him to the keeper thereof,
together with this precept, and we do also command you the said keeper to receive
and keep in your custody the said A.B. for the space of three months, unless the
said sum and costs shall be sooner paid; and for so doing this shall be your
sufficient warrant. Given under our hands and seals,

ANNO TERTIO ET QUARTO GULIELMI IV. REGIS.

CAP. CIII.

An Act to regulate the Labour of Children and Young Persons
in the Mills and Factories of the United Kingdom.

[29th August, 1833.]

WHEREAS it is necessary that the hours of labour of children and young persons employed in mills and factories should be regulated, inasmuch as there are great numbers of children and young persons now employed in mills and factories, and their hours of labour are longer than is desirable, due regard being had to their health and means of education: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the first day of January, one thousand eight hundred and thirty-four, no person under eighteen years of age shall be allowed to work in the night, that is to say, between the hours of half-past eight o'clock in the

Persons under eighteen years of age not allowed to work at night in the mills or factories herein described.

evening and half-past five o'clock in the morning, except as hereinafter provided, in or about any cotton, woollen, worsted, hemp, flax, tow, linen, or silk mill or factory, wherein steam or water or any other mechanical power is or shall be used to propel or work the machinery in such mill or factory, either in scutching, carding, roving, spinning, piecing, twisting, winding, throwing, doubling, netting, making thread, dressing or weaving of cotton, wool, worsted, hemp, flax, tow, or silk, either separately or mixed, in any such mill or factory situate in any part of the United Kingdom of Great Britain and Ireland: Provided always, that nothing in this Act shall apply or extend to the working of any steam or other engine, water-wheel, or other power in or belonging to any mill or building or machinery when used in that part of the process or work commonly called fulling, roughing, or boiling of woollens, nor to any apprentices or other persons employed therein, nor to the labour of young persons above the age of thirteen years when employed in packing goods in any warehouse or place attached to the mill, and not used for any manufacturing process: Provided also, that nothing in this Act shall apply or extend to any mill or factory used solely for the manufacture of lace. (Amended by 7 Vict. c. 15, ss. 34, 73, and extended to lace factories with certain exceptions by 24 & 25 Vict. c. 117. Ropeworks are declared not to be within the statute by 9 & 10 Vict. c. 40.)

Persons under eighteen not to work more than 12 hours a day

Extension of hours of working in certain cases.

Providing for unavoidable time lost in cases of accident.

Loss of time from the want or excess of water in the day-time provided for.

II. And be it further enacted, that no person under the age of eighteen years shall be employed in any such mill or factory in such description of work as aforesaid more than twelve hours in any one day, nor more than sixty-nine hours in any one week, except as hereinafter provided. (Limited by 10 Vict. c. 29, and entirely repealed by 13 & 14 Vict. c. 54, s. 1.)

III. Provided always, and be it further enacted, that if at any time in any such mill, manufactory, or buildings situated upon any stream of water, time shall be lost in consequence of the want of a due supply or of an excess of water, or by reason of its being impounded in higher reservoirs, then and in every such case and so often as the same shall happen it shall be lawful for the occupier of any such mill, manufactory, or building to extend the time of labour in this Act prescribed at the rate of three hours per week until such lost time shall have been made good, but no longer, such time to be worked between the hours of five of the clock in the morning and nine of the clock in the evening: Provided also, that no time shall be recoverable after it has been lost six calendar months. (See 7 Vict. c. 15, s. 33.)

IV. And be it further enacted, that when any extraordinary accident shall happen to the steam-engine, water-wheel, weirs, or watercourses, main shafting, main gearing, or gas apparatus of any such mill, manufactory, or buildings, by which not less than three hours labour at any one time shall be lost, then and in every such case such time may be worked up at the rate of one hour a day, in addition to the aforesaid and hereinafter restricted hours of labour, for the twelve following working days, but not after. (See 7 Vict. c. 15, s. 33.)

V. And whereas during periods of drought and of floods the power of water-wheels on some streams is wholly interrupted, or so far diminished that the machinery or part or parts of the machinery dependent upon such power cannot be regularly worked at one and the same time, and in consequence thereof a certain portion of the time of such persons as are employed in the working of such machinery may be lost in each day during such period of drought or floods; be it therefore enacted, that it shall be lawful for the occupier of any mill, manufactory, or building, when time is so lost, then and in every such case and so often as the same shall happen, to extend the hours between which persons under eighteen years of age are hereinbefore allowed to work (*videlicet*, from five of the clock in the morning till nine in the evening), as hereinbefore limited, to such period as may in such case be necessary to prevent the loss of time, and no longer: Provided always, that no child or young person within the respective ages prescribed by this Act shall be actually employed a greater number of hours within the twenty-four hours of any one day than this Act declares to be lawful; and provided also, that no child under thirteen years of age shall be employed

after the hour of nine o'clock in the evening nor before the hour of five in the morning. (See 7 Vict. c. 15, s. 33.)

VI. And be it further enacted, that there shall be allowed in the course of every day not less than one and a half hours for meals to every such person restricted as hereinbefore provided to the performance of twelve hours work daily. (See further 7 Vict. c. 15, s. 36.)

VII. And be it enacted, that from and after the first day of January, one thousand eight hundred and thirty-four, it shall not be lawful for any person whatsoever to employ in any factory or mill as aforesaid, except in mills for the manufacture of silk, any child who shall not have completed his or her ninth year of age. (Repealed by 7 Vict. c. 15, s. 29. See 16 & 17 Vict. c. 104.)

VIII. And be it further enacted, that from and after the expiration of six months after the passing of this Act it shall not be lawful for any person whatsoever to employ, keep, or allow to remain in any factory or mill as aforesaid for a longer time than forty-eight hours in any one week, nor for a longer time than nine hours in any one day, except as herein provided, any child who shall not have completed his or her eleventh year of age, or after the expiration of eighteen months from the passing of this Act any child who shall not have completed his or her twelfth year of age, or after the expiration of thirty months from the passing of this Act any child who shall not have completed his or her thirteenth year of age: Provided nevertheless, that in mills for the manufacture of silk, children under the age of thirteen years shall be allowed to work ten hours in any one day. (Altered by 7 Vict. c. 16, ss. 30, 31. See also s. 72, and 16 & 17 Vict. c. 104.)

IX. And be it further enacted, that all children and young persons whose hours of work are regulated and limited by this Act shall be entitled to the following holidays; *videlicet*, on Christmas-day and Good Friday the entire day, and not fewer than eight half days besides in every year, such half days to be at such period or periods, together or separately, as may be most desirable and convenient, and as shall be determined on by the master of such children and young persons: Provided nevertheless, that in Scotland any other days may be substituted for Christmas-day and for Good Friday, both or either, as such master may determine. (Amended by 7 Vict. c. 15, ss. 37, 38.)

X. And be it further enacted, that if any child within the age hereinbefore restricted to nine hours of day labour shall have been employed in any one day for less than nine hours in one factory or mill, it shall be lawful for any person to employ such child in any other factory or mill on the same day for the residue of such nine hours; provided that such employment in such other mill or factory shall not increase the labour of such child to more than nine hours in any one day, or to more than forty-eight hours in any one week. (Amended by 7 Vict. c. 15, s. 30.)

XI. And be it further enacted, that from and after the expiration of six months after the passing of this Act it shall not be lawful for any person to employ, keep, or allow to remain in any factory or mill any child who shall not have completed his or her eleventh year of age without such certificate as is hereinafter mentioned, certifying such child to be of the ordinary strength and appearance of a child of the age of nine years, nor from and after the expiration of eighteen months after the passing of this Act any child who shall not have completed his or her twelfth year of age, without a certificate of the same form, nor from and after the expiration of thirty months after the passing of this Act any child who shall not have completed his or her thirteenth year of age, without a certificate of the same form, which certificate shall be taken to be sufficient evidence of the ages respectively certified therein. (Amended by 7 Vict. c. 15, ss. 9-17.)

XII. And be it further enacted, that for the purpose of obtaining the certificate hereinbefore required in the case of children under the age of eleven, twelve, or thirteen years respectively, the child shall personally appear before some surgeon or physician of the place or neighbourhood of its residence, and shall

Time for meals.

Employment of children under nine years prohibited.

The employment of children under 11, 12, and 13 years of age for more than eight hours a day prohibited.

Holidays to be allowed.

Children employed in any one mill less than nine hours not to be employed in any other mill more than the residue of nine hours. Children not to be employed without a certificate from a surgeon as to strength and appearance.

Certificates to be made by a surgeon or physician.

submit itself to his examination; and unless the surgeon or physician before whom the child has so appeared shall certify his having had a personal examination or inspection of such child, and also that such child is of the ordinary strength and appearance of children of or exceeding the age of nine years, and unless also such certificate shall within three months of its date be countersigned by some inspector or justice, or in that part of the United Kingdom called Scotland by some inspector or justice or burgh magistrate, such child shall not be employed in any factory or mill. (Amended by 7 Vict. c. 15, ss. 8, 9, 10. See ss. 10, 11.)

Form of
certificate
of surgeon
or physician.

XIII. And be it further enacted, that the certificates hereinbefore required in the case of children under the age of eleven, twelve, or thirteen years respectively shall be in the form following:—

"I [*name and place of residence*], surgeon [*or physician*], do hereby certify, that A. B., the son [*or daughter*] of [*name and residence of parents, or, if no parents, then the residence of the child*], has appeared before me, and submitted to my examination; and that the said [*name*] is of the ordinary strength and appearance [*according to the fact*] of a child of at least nine years of age [*or if apparently above nine, say exceeding.*]" (Repealed by 7 Vict. c. 15, s. 9; and see Schedule A.)

Children
between
11 and 18
not to be
employed
in factories
more than
nine hours
a day, or at
night, with-
out a certi-
ficate of age.

XIV. And be it further enacted, that from and after the commencement of the several periods hereinbefore appointed for restricting the employment of children under the ages of eleven, twelve, and thirteen years respectively, it shall not be lawful to employ, keep, or allow to remain in any factory or mill any person between the said ages respectively and the age of eighteen for more than nine hours in any day, nor between the hours of nine o'clock in the evening and five o'clock in the morning, without first requiring and receiving from such person a certificate in proof that such person is above the age of eleven, twelve, and thirteen respectively, which certificate, if a new certificate shall be required, shall be in such form as may be ordered by any inspector. (See 7 Vict. c. 15, ss. 9, 17, 34.)

Penalties
against
persons not
having
certificates
not to be
levied if it
shall ap-
pear that
the person
employed
was above
the age
required.

XV. Provided nevertheless, and be it enacted, that the penalties and punishments hereinafter provided against any person not requiring or not receiving such certificate shall not be levied, if upon the complaint or proceeding for the enforcement of such penalties it shall appear to the satisfaction of the inspector or justice, or in that part of the United Kingdom called Scotland to the satisfaction of the inspector or justice or burgh magistrate by or before whom such proceeding shall be had, that the person so employed more than nine hours in the day, or between the hours of nine o'clock in the evening and half-past five o'clock in the morning, without such certificate, was at the time of the alleged offence above the age of eleven, twelve, or thirteen respectively. (Amended by 7 Vict. c. 15, ss. 53, 54, 55.)

Provision
in case
magistrates
refuse to
countersign
certificates.

XVI. And be it further enacted, that in case any inspector or justice or burgh magistrate shall refuse to countersign any such certificate, he shall state in writing his reasons for such refusal, and the parents of such child may thereupon take the certificate to the justices of the peace at Petty Sessions for the place or district of the child's residence, who are hereby empowered and required to decide upon the validity of such refusal; and every such act of any such Petty Sessions shall be free of all charge, cost, or expense whatsoever. (See 7 Vict. c. 15, ss. 2, 10, 11.)

42 Geo. III.
c. 73.

XVII. And whereas by an Act, intituled "An Act for the preservation of the health and morals of apprentices and others employed in cotton and other mills and cotton and other factories," passed in the forty-second year of the reign of his late Majesty George the Third, it was amongst other things provided, that the justices of the peace for every county or place in which such mill was situated should appoint yearly two persons not interested in or in any way connected with such mills or factories in such county to be visitors of such mills or factories, which visitors so appointed were empowered and required by the

aforesaid Act to enter such factories at any time they might think fit, and examine and report in writing whether the same were conducted according to the laws of the realm, and also to direct the adoption of such sanitary regulations as they might, on advice, think proper: and whereas it appears that the provisions of the said Act with relation to the appointment of inspectors were not duly carried into execution, and that the laws for the regulation of the labour of children in factories have been evaded, partly in consequence of the want of the appointment of proper visitors or officers whose special duty it was to enforce their execution; Be it therefore enacted, that upon the passing of this Act it shall be lawful for his Majesty by warrant under his sign manual to appoint during his Majesty's pleasure four persons to be inspectors of factories and places where the labour of children and young persons under eighteen years of age is employed, and in the case of the death or dismissal of any of them to appoint another in the place of such deceased inspector, which said several inspectors shall carry into effect the powers, authorities, and provisions of the present Act; and such inspectors or any of them are hereby empowered to enter any factory or mill, and any school attached or belonging thereto, at all times and seasons, by day or by night, when such mills or factories are at work, and having so entered to examine therein the children and any other person or persons employed therein, and to make inquiry respecting their condition, employment, and education; and such inspectors or any of them are hereby empowered to take or call to their aid in such examination and inquiry such persons as they may choose, and to summon and require any person upon the spot or elsewhere to give evidence upon such examination and inquiry, and to administer to such person an oath. (See 7 Vict. c. 15, s. 3.)

Inspectors
to be ap-
pointed.

XVIII. And be it further enacted, that the said inspectors or any of them shall have power and are hereby required to make all such rules, regulations, and orders as may be necessary for the due execution of this Act, which rules, regulations, and orders shall be binding on all persons subject to the provisions of this Act; and such inspectors are also hereby authorized and required to enforce the attendance at school of children employed in factories according to the provisions of this Act, and to order tickets or such other means as they may think fit for vouchers of attendance at such schools; and such inspectors are also hereby required to regulate the custody of such tickets or vouchers, and such inspectors may require a register of them to be kept in every school and factory; and such inspectors are also hereby authorized and required to order a register of the children employed in any factory, and of their sex and hours of attendance, and of their absence on account of sickness, to be kept in such factory; and all registers, books, entries, accounts, and papers kept in pursuance of this Act shall at all times be open to such inspectors, and such inspectors may take or cause to be taken for their own use such copy as they may think proper; and such inspectors shall also make such regulations as may be proper to continue in force any certificates, tickets, or vouchers required by this Act, and such certificates, tickets, or vouchers so continued in force shall have the same operation and effect as new certificates, tickets, or vouchers; and such inspector shall order and is hereby authorized to order the occupier of any factory or mill to register or cause to be registered any information with relation to the performance of any labour in such mill or factory, if such inspector deem such information necessary to facilitate the due enforcement of any of the provisions of this Act or of any of the regulations which he may make under the authority of this Act; and such inspector is hereby authorized to order such occupier of any mill or factory to transmit, in such manner as may be directed in such order, any information with relation to the persons employed or the labour performed in such mill or factory that such inspector may deem requisite to facilitate the performance of his duties or any inquiry made under the authority of this Act. (Powers repealed by 7 Vict. c. 15, s. 2; see also ss. 27, 39.)

Powers and
duties of
inspectors
for the en-
forcement
of this Act.

XIX. And be it further enacted, that it shall be lawful for one of his Majesty's principal secretaries of state, if he shall see fit, upon the application of any

One of the
secretaries

of state
may ap-
point per-
sons to
superin-
tend, under
the inspec-
tor, the
execution
of this Act.

inspector, to appoint any one or more persons to superintend, under the direction of any inspector, the execution of the provisions of this Act, and of all rules, regulations, and orders made under the authority thereof; and such person shall be paid by such salary as may be determined by one of his Majesty's principal secretaries of state; and such person so appointed shall have authority to enter any school-room, counting-house, or any part of any factory or mill, excepting such part or parts as may be used for manufacturing processes; and if any constable or peace officer shall be required by any inspector to perform any continuous service, it shall be lawful for such inspector to allow a special recompence to such constable or peace officer for such service: Provided nevertheless, that any such orders may be altered or disallowed by one of his Majesty's principal secretaries of state, on complaint made to him by memorial from any party interested. (See 7 Vict. c. 15, s. 3.)

Children in
factories to
attend a
school.

XX. And be it further enacted, that from and after the expiration of six months from the passing of this Act every child hereinbefore restricted to the performance of forty-eight hours of labour in any one week shall, so long as such child shall be within the said restricted age, attend some school to be chosen by the parents or guardians of such child, or such school as may be appointed by any inspector in case the parents or guardians of such child shall omit to appoint any school, or in case such child shall be without parents or guardians; and it shall and may be lawful, in such last-mentioned case, for any inspector to order the employer of any such child to make a deduction from the weekly wages of such child as the same shall become due, not exceeding the rate of one penny in every shilling, to pay for the schooling of such child; and such employer is hereby required to pay the sum so deducted according to the order and direction of such inspector. (See 7 Vict. c. 15, ss. 31, 38, 39.)

School-
master's
voucher
required.

XXI. And be it further enacted, that after the expiration of six months from the passing of this Act it shall not be lawful to employ or continue to employ in any factory or mill any child restricted by this Act to the performance of forty-eight hours of labour in any one week, unless such child shall, on Monday in every week next after the commencement of such employment, and during every succeeding Monday or other day appointed for that purpose by an inspector, give to the factory master or proprietor, or to his agent, a schoolmaster's ticket or voucher, certifying that such child has for two hours at least for six out of seven days of the week next preceding attended his school, excepting in cases of sickness, to be certified in such manner as such inspector may appoint, and in case of any holiday, and in case of absence from any other cause allowed by such inspector, or by any justice of the peace in the absence of the inspector; and the said last-mentioned ticket shall be in such form as may be settled by any inspector. (See 7 Vict. c. 15, ss. 31, 38, 39.)

Means of
providing
additional
schools.

XXII. And be it further enacted, that wherever it shall appear to any inspector that a new or additional school is necessary or desirable to enable the children employed in any factory to obtain the education required by this Act, such inspector is hereby authorized to establish or procure the establishment of such school. (See 7 Vict. c. 15, s. 66.)

Inspector
may disal-
low order
for salary,
if school-
master or
schoolmis-
tress in-
competent.

XXIII. And be it further enacted, that if upon any examination or inquiry any inspector shall be of opinion that any schoolmaster or schoolmistress is incompetent or in any way unfit for the performance of the duties of that office, it shall and may be lawful for such inspector to disallow and withhold the order for any payment or any salary to such schoolmaster or schoolmistress as hereinbefore provided. (See 7 Vict. c. 15, s. 39.)

Mill owner
liable to
penalty for
child re-
maining on
the pre-
mises more
than nine
hours.

XXIV. And be it further enacted, that if any child within the several ages hereinbefore restricted to the performance of nine hours of day labour shall be kept or allowed to remain in any room or place whatsoever where any machinery is used, or shall be kept or allowed to remain on any premises within the outer walls of any factory or mill, for any longer time than nine hours during any one day, or for any longer time than the residue of such nine hours in the case of any child which has been previously employed for any shorter time during the same

day in any other factory or mill, the occupier of such factory or mill shall, without any evidence of the employment of such child, be liable to the same penalty and punishment as for employing such child for such longer period: Provided nevertheless, that no place, yard, or play-ground open to the public view shall be considered part of the premises on which children shall not be allowed to remain beyond the hours hereinbefore stated: And be it further provided, that the children may be allowed to remain in any schoolroom attached to such factory or mill, or in any other waiting-room or parts of the premises where no machinery is used, and which shall at all times be open to the inspection of any mill warden or peace officer duly appointed under the provisions of this Act. (Amended by 7 Vict. c. 15, s. 52; also, 16 and 17 Vict. c. 104.)

Proviso as to play-grounds and schools.

XXV. And be it further enacted, that notice of any general order or regulation applying to more than one mill or factory, made by any inspector, if published for two successive weeks in one or more newspapers published in the town, place, or county where any such mill or factory is situate, shall in all cases, at the end of seven days after the second publication thereof, have the same effect in attaching a responsibility upon any offender against such order or regulation as a notice personally served upon such offender: Provided nevertheless, that such notice shall not be to the exclusion of any other special notice which any inspector may deem expedient or proper. (See 7 Vict. c. 15, s. 51.)

Notices by inspectors.

XXVI. And be it further enacted, that the interior walls, except such parts as are painted, of every mill or factory or building where the process of manufacturing is carried on, shall be limewashed, and the ceilings of all rooms which have rooms or lofts above them, and all ceilings which are plastered, shall be whitewashed once every year, unless permission to the contrary, in writing, be granted by any Inspector. (Repealed by 7 Vict. c. 15, s. 18.)

Interior walls of every mill, &c., to be limewashed.

XXVII. And be it further enacted, that a copy or copies of such abstract of this Act, and also such copy or copies of any regulation or regulations made in pursuance of this Act, as any inspector shall direct, shall be hung up and affixed in a conspicuous part or in the several departments of every mill or factory; and such copy or copies of such abstract and of such rules or regulations, so hung up and affixed, shall be signed by the master or manager or overseer of such mill or factory; and such copy or copies shall be renewed by such master, manager, or overseer so often as any inspector may direct. (See 7 Vict. c. 15, s. 28.)

An abstract of this Act, and such rules and regulations as any inspector may determine, shall be hung up in mills.

XXVIII. And be it further enacted, that if any person shall give, sign, countersign, endorse, or in any manner give currency to any false certificate, knowing the same to be untrue, or if any person shall forge any certificate, or shall forge any signature or endorsement on any certificate, or shall knowingly and wilfully give false testimony upon any point material to any certificate of any inspector or schoolmaster, such person shall be deemed guilty of a misdemeanor, and shall, on conviction thereof before any inspector or justice, be liable to be imprisoned for any period not exceeding two months in the house of correction in the county, town, or place where such offence was committed. (Repealed by 7 Vict. c. 15, ss. 28, 63.)

Punishment for forgery of certificates.

XXIX. And be it further enacted, that in case of the employment of any child contrary to the provisions of this Act, or for a longer time than is hereinbefore limited and allowed, or without a due compliance with the provisions of this Act touching the education of children, or the certificates of surgeons or magistrates, the parent or parents of such child, or any person having any benefit from the wages of such child, shall be liable to a penalty of twenty shillings, unless it shall appear to the satisfaction of the justice or inspector that such unlawful employment has been without the wilful default of such parent or person so benefited as aforesaid. (Repealed by 7 Vict. c. 15, ss. 40-63.)

Parents liable to penalty of 20s. for the employment of children beyond the legal hours, &c.

XXX. And be it further enacted, that if any offence shall be committed against this Act, for which the master of any factory or mill is legally responsible, and it shall appear to the satisfaction of any justice or inspector that the same has been committed without the personal consent, concurrence, or knowledge of such master, by or under the authority of some agent or servant or

Agents and servants of factory owners to be personally liable.

workman of such master, it shall be lawful for such inspector or justice to summon such agent or servant or workman before him to answer for such offence, and such agent or servant or workman shall be liable to the penalties and punishment for such offence herein provided, and such inspector or justice shall convict such agent or servant or workman in lieu of such master. (See 7 Vict. c. 15, s. 41.)

Penalties
for offences
against this
Act.

XXXI. And be it further enacted, that if any employer of children in any factory or mill shall, by himself or by his servants or workmen, offend against any of the provisions of this Act, or any order or regulation of any inspector made in pursuance hereof, such offender shall for such offence (except in the case of any offence for which some other penalty or punishment is specially provided) forfeit and pay any sum not exceeding twenty pounds, nor less than one pound, at the discretion of the inspector or justice before whom such offender shall be convicted: Provided nevertheless, that if it shall appear to such inspector or justice that such offence was not wilful nor grossly negligent, such inspector or justice may mitigate such penalty below the said sum of one pound, or discharge the person charged with such offence. (Repealed by 7 Vict. c. 15, s. 40. See sec. 64 for new provision.)

Penalty for
obstructing
inspectors.

XXXII. And be it further enacted, that if any person shall knowingly and wilfully obstruct any inspector in the execution of any of the powers entrusted to him by this Act, such person shall for every such offence forfeit and pay a sum not exceeding ten pounds.

Inspectors
to have
same
powers
over
constables
as
justices.

XXXIII. And be it further enacted, that such inspector shall have the same powers, authority, and jurisdiction over constables and peace officers, as regards the execution of the provisions of this Act, as may by law be exercised by his Majesty's justices of the peace over such constables and peace officers.

Proceedings
under this
Act may be
had before
any one in-
spector or
any one
magistrate.

XXXIV. And be it further enacted, that all proceedings for the enforcement of any penalty or punishment imposed by or under the authority of this Act may be had before any inspector or justice of the peace acting in or for the town, place, county, or division where the offence shall be committed; and the inspector or justice before whom any person shall be summarily convicted and adjudged to pay any sum of money for any offence against this Act may adjudge that such person shall pay the same either immediately or within such period as the said inspector or justice shall think fit; and in case such sum of money shall not be paid immediately or at the time so appointed, the same shall be levied by distress and sale of the goods and chattels of the offender, together with the reasonable charges of such distress; and for want of sufficient distress such offender shall be imprisoned in the common gaol for any term not exceeding one calendar month where the sum to be paid shall not exceed five pounds, or for any term not exceeding two calendar months in any one case, the imprisonment to cease in each of the cases aforesaid upon payment of the sum due.

Complaints
to be pre-
ferred at or
before the
visit of the
inspector;
and previous
notice
given.

XXXV. And be it further enacted, that all complaints for offences against this Act shall be preferred at or before the time of the visit, duly notified, of any inspector next after the commission of such offence; and written notice of the intention to prefer the complaint for such offence shall by the complainant be given within fourteen days after the commission of such offence to the party or parties complained against: Provided always, that no more than one penalty for a repetition of the same offence shall be recoverable, except after the service of the written notice as aforesaid.

Proviso as
to penalties.

In case of
partner-
ships, one
name suffi-
cient for
summons,
&c.

XXXVI. And be it further enacted, that it shall not be deemed necessary in any summons or warrant issued in pursuance of this Act to set forth the name or other designation of each and every the partners in any such mill or factory, but that it shall be lawful to insert in such summons or warrant the name of the ostensible occupier or title of the firm by which the occupier or occupiers employing the workpeople of every such mill or factory are usually designated and known.

Service of
summons.

XXXVII. And be it further enacted, that the service of such summons or warrant on any occupier, principal manager, conductor, or agent of any such mill or factory shall be good and lawful service.

XXXVIII. And be it further enacted, that it shall be lawful for the inspectors or any of them, or for any justice of the peace, upon any complaint, or upon any investigation under this Act without any complaint, to administer an oath to any witness, and to summon any witness forthwith to appear and give evidence before him or them, or at a time and place appointed for hearing such complaint or making such investigation, or to order such witness to be brought before him by any constable or peace officer; and if such witness shall not appear according to such summons, proof upon oath having been given of the due service of such summons, or shall resist such constable or peace officer, or shall not submit to be examined as a witness, it shall be lawful for such inspectors and justices by warrant under their hand and seal to commit such person for such non-appearance, resistance, or non-submission to the county prison, or prison of the place where such offence was committed, there to remain without bail or mainprize for any time not exceeding two calendar months.

Inspectors and justices may summon witnesses to appear and give evidence, and on neglect may commit to prison;

XXXIX. Provided nevertheless, and be it enacted, that except in the case of resistance to any constable or peace officer, it shall be lawful for the inspector or justice by whom such person shall have been committed to discharge such person from prison, if such person shall show any cause to such inspector or justice which shall be deemed satisfactory as an excuse for such non-appearance, or if such person shall afterwards submit himself to be examined to the satisfaction of such inspector or justice, and the order of such inspector or justice for such discharge shall be a sufficient warrant to any gaoler or prison-keeper.

and afterwards discharge them on sufficient excuse or compliance.

XL. And be it further enacted, that every conviction under this Act before any inspector or justice may be made according to the form in the schedule to this Act annexed; which conviction shall be certified to the next General Quarter Sessions, there to be filed amongst the records of the county, riding, or division, and shall have the force of an Act of Record, whether the same shall be by an inspector or by a justice of the peace for such county, riding, or division; and no conviction or other proceeding of any inspector or justice under this Act shall be deemed illegal for any mere informality.

Convictions to be filed amongst records of county.

XLI. And be it further enacted, that if any person who shall have been sentenced or adjudged to pay any penalty or forfeiture under this Act shall neglect or refuse to pay the same, it shall be lawful for the inspector or magistrates before whom such person shall have been convicted to issue his warrant to distrain the goods and chattels of such person; and if no sufficient distress shall be found, it shall be lawful for the said inspector or magistrates, upon such fact being certified by the constable having the execution of such distress warrant, to commit such person to the house of correction or common gaol of the town, county, or place where such offence was committed for any time not exceeding two months; and the said warrant of distress, commitment, and certificate of the constable may be in the forms contained in the schedule to this Act annexed.

Inspector or justice may commit to prison for two months in case payment of penalty is refused or distress is insufficient.

XLII. And be it further enacted, that no appeal against any conviction under this Act shall be allowed, except in the case of a conviction for the forgery of any certificates, vouchers, or other documents required by this Act, or by any inspector under the authority of this Act; neither shall any conviction, except in the case herein last excepted, be removable by certiorari or bill of advocation into any court whatever.

As to appeal.

As to convictions.

XLIII. And be it further enacted, that any justice or inspector by whom any complaint under this Act is determined shall, if he so thinks fit, give to the complainant or prosecutor one-half of any penalty imposed for any offence against any of the provisions of this Act, together with all costs of prosecution and conviction, and the remainder of the penalty, or the whole if he shall think fit, shall be applied as such justice or inspector may direct for the benefit of any school wherein children employed in mills or factories are educated in such township or place where such offence shall be committed: Provided always, that only one penalty shall be recoverable for any one description of offence from any one person for any one day; and that it shall not be deemed necessary for the complainant or prosecutor to name in any summons the particular township in which

Application of penalties.

Restriction as to penalties.

Summons.

such offence shall have been committed, but it shall be lawful to set forth in such summons the name of the parish where such offence may have been committed: Provided always, that such summons shall be issued upon complaint being made upon oath.

Inspector may order constable to provide a convenient place for holding sittings.

XLIV. And be it further enacted, that every inspector shall be and is hereby authorized to order any constable or peace officer to provide for such inspector a convenient place for holding any sitting; and the expense of providing such place shall be defrayed in the manner and proportions and by the person or persons herein appointed for the payment of any special remuneration to any constable or peace officer.

Inspectors to make annual reports.

XLV. And be it further enacted, that every inspector shall keep full minutes of all his visits and proceedings, and shall report the same to one of his Majesty's principal secretaries of state twice in every year, and oftener if required, and shall also report the state and condition of the factories or mills and of the children employed therein, and whether such factories or mills are or are not conducted according to the directions of this Act and of the laws of the realm:

Proceedings of inspectors required to be uniform.

and whereas it is expedient that the proceedings, rules, orders, and regulations of the several inspectors appointed under this Act should be as nearly alike as is practicable under all circumstances, therefore such inspectors are hereby required, within three months next after they shall have commenced the execution of their several duties and powers under this Act, and twice at least in every year afterwards, to meet and confer together respecting their several proceedings, rules, orders, regulations, duties, and powers under this Act, and at such meeting to make their proceedings, rules, orders, and regulations as uniform as is expedient and practicable; and such inspectors are hereby required to make and keep full minutes of such meetings, and to report the same to such secretary of state when they make the report hereinbefore required.

Burgh magistrates in Scotland to exercise same powers as justices of peace in England.

XLVI. And be it further enacted, and it is hereby declared, that in all cases in which any justices or justice of the peace are or is required to act or do any thing in any manner under this Act, or are or is named therein, and whenever the subject matter of any one of the enactments or provisions of this Act shall arise within that part of the United Kingdom called Scotland, the burgh magistrates shall be held to have and shall have within the limits of their own jurisdiction the same powers, duties, and authorities, and which they are hereby required to exercise, as are by this Act conferred upon the said justices of the peace, and are required to be exercised by them.

Act not to extend to persons on repairs.

XLVII. Provided always, and be it enacted, that nothing in this Act contained shall apply to mechanics, artizans, or labourers under the prescribed ages working only in repairing the machinery or premises.

The Act 1 & 2 Will. IV. c. 89, repealed, except as it repeals any other Acts.

XLVIII. And be it further enacted, that from and after the first day of January, one thousand eight hundred and thirty-four, the Act passed in the first and second years of the reign of his present Majesty, intituled "An Act to amend the laws relating to apprentices and other persons employed in cotton mills, and to make further provisions in lieu thereof," shall be repealed, and the same is hereby repealed, except as to any Act or Acts repealed by the same.

Construction of terms.

XLIX. And be it further enacted, that any words in this Act denoting the masculine gender shall be construed to extend to persons of either sex, and any words denoting the singular number shall be construed to extend to any number of persons or things, if the subject matter or context shall admit of such an interpretation, unless such construction shall be in express opposition to any other enactment.

Public Act.

L. And be it further enacted, that this Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all judges, justices, and others.

Note.—All the sections from 32 have been repealed by 7 Vict. c. 15, except ss. 33, 45, 46, 47, 48, 49, 50, which, however, are more or less modified by that Act.

THE SCHEDULE TO WHICH THIS ACT REFERS.

Form of Conviction.

County of [town of] BE it remembered, that on the day
 as the fact may be to wit. } of in the year
 A. B. [describe the offender] was, upon the complaint of C. D. [or upon the view
 of C. D., one of his Majesty's inspectors of factories], convicted before E. F., one
 of his Majesty's inspectors of factories, or justices of the peace of and for, &c.
 [as the case may be], in pursuance of an Act passed in the fourth year of the reign
 of his majesty King William the Fourth, for [describe the offence]. Given under
 my hand and seal the day and year above mentioned.

Warrant to distrain for Forfeiture.

To the constable, &c.

County of } Whereas A. B. of in the said
 to wit. } county, is this day convicted before me, C. D., one of his
 Majesty's inspectors of factories [or justices of the peace in and for the said
 county], upon the oath of a credible witness [or upon my own view, as the case
 may be], for that he the said A. B. hath [here set forth the offence, describing it
 particularly in the words of the statute or rule, as near as can be] contrary to the
 statute [or rule, if the offence is against some rule or regulation or order of an
 inspector] in that case made and provided, by reason whereof the said A. B. is
 adjudged to have forfeited the sum of £ , to be distributed as hereinafter
 mentioned: these are therefore in his Majesty's name to command you to
 levy the said sum of £ by distress of the goods and chattels of him
 the said A. B.; and if within the space of four days next after such distress by
 you taken, the said sum of £ together with the reasonable charges
 of taking and keeping the same, shall not be paid, that then you do sell the said
 goods and chattels by you so distrained, and out of the money arising by such
 sale that you do pay [according to the award of the justice], returning the overplus,
 on demand, to him the said A. B., the reasonable charges of taking, keeping, and
 selling the said distress being first deducted; and if sufficient distress cannot be
 found of the goods and chattels of the said A. B. whereon to levy the said sum
 of £ that then you certify the same to me, together with this warrant.
 Given under my hand and seal the day of

C. D.

Return of Constable upon Warrant of Distress where no Effects.

I, A. B., constable of , in the county of , do hereby
 certify and make oath, that by virtue of this warrant I have made diligent
 search for the goods of the within-named , and that I can find no
 sufficient goods whereon to levy the same. As witness my hand, the
 day of A. B.

Sworn before me the day and year

C. D.

Commitment for Want of Distress.

County of } To the constable of , in the county of , and
 to wit. } to the keeper of the common gaol [or house of correction]
 at , in the said county.

Whereas A. B., of , in the said county, was, on the
 day of , convicted before me, C. D., Esquire, one of his Majesty's
 justices of the peace in and for the said county [or inspector of factories, as the
 fact may be], upon the oath of a credible witness [or upon my own view, as the
 case may be], for that he [here set forth the offence], contrary to the statute made
 in the year of the reign of his Majesty King William IV. for
 [according to the title of the Act, or contrary to a certain rule or order or regula-
 tion of his Majesty's inspectors of factories], and the said A. B., by reason

thereof, hath been adjudged to forfeit and pay the sum of : And
 whereas, on the day of , in the year aforesaid, I did
 issue my warrant to the constable of to levy the said sum of
 by distress and sale of the goods and chattels of him, the said A. B., and to
 distribute the same as in my said warrant was mentioned: And whereas it duly
 appears to me, upon the oath of the said constable, that he hath used his best
 endeavours to levy the said sum on the goods and chattels of the said A. B.,
 but that no sufficient distress can be had whereon to levy the same: These are
 therefore to command you, the said constable of aforesaid, to
 apprehend the said A. B., and him safely to convey to the common gaol [or
 house of correction] at , in the said county, and there deliver him
 to the keeper thereof, together with this precept; and I do also command you,
 the said keeper, to receive and keep in your custody the said A. B. for the space
 of , unless the said sum shall be sooner paid, pursuant to the said
 conviction and warrant; and for so doing this shall be your sufficient warrant.
 Given under my hand and seal, day of C. D.

ANNO QUARTO GULIELMI IV. REGIS.

CAP. I.

An Act to explain and amend an Act of the last Session of
 Parliament, for regulating the Labour of Children and young
 Persons in the Mills and Factories of the United Kingdom.

[February 20, 1834.]

8 & 4 Will.
 IV. c. 103.

The word
 months in
 recited Act
 to be con-
 strued as
 calendar
 months.

In silk mills,
 children
 under thir-
 teen years
 of age al-
 lowed to
 work ten
 hours every
 working
 day.

Act may be
 altered this
 session.

WHEREAS by an Act passed in the last session of Parliament, intituled "An Act to regulate the labour of children and young persons in the mills and factories of the United Kingdom," it was enacted among other things that certain provisions of the said Act should come into operation at the end of eighteen months, and certain other provisions also at the end of thirty months, after the passing of the said Act; and it is expedient that the periods mentioned in the said provisions respectively should be construed to be calendar months, not lunar months: Be it therefore enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the said periods of eighteen months and thirty months mentioned in the said Act shall be construed and taken to mean periods of eighteen calendar months and thirty calendar months respectively.

II. And whereas it is provided by the said Act, that in mills for the manufacture of silk, children under the age of thirteen years shall be allowed to work ten hours in any one day; and doubts have arisen whether, according to the true construction of the said Act, children in such mills can be allowed to work ten hours every working day in the week: Be it therefore further enacted, that in mills for the manufacture of silk, children under the age of thirteen years shall be allowed to work ten hours every working day in the week; and that this enactment shall be substituted in the place of the provision hereinbefore referred to, and be taken in all respects as part of the said Act.

III. And be it enacted, that this Act may be amended, altered, or repealed by any Act to be passed during the present session of Parliament.

ANNO PRIMO VICTORIÆ REGINÆ.

CAP. LXVII.

An Act to amend an Act of the Fifth Year of His Majesty King George the Fourth, for consolidating and amending the Laws relative to the Arbitration of Disputes between Masters and Workmen. [15th July, 1837.]

WHEREAS an Act was passed in the fifth year of the reign of his Majesty King George the Fourth, intituled "An Act to consolidate and amend the laws ^{5 Geo. IV. c. 96.} relative to the arbitration of disputes between masters and workmen:" And whereas it is provided by the said Act that all complaints under the same by any workman for any cause, except as to bad materials, shall be made within six days after such cause of complaint shall arise; but the said period of six days has been found too short for the purpose thereby intended: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that the same be extended to fourteen days.

Period for making complaints extended.

II. And whereas it is enacted by the said Act, that various differences under the same shall be subject as therein mentioned to the adjudication of any justice of the peace or magistrate of any county, riding, division, stewartry, barony, city, burgh, town, or place within which the parties reside: And whereas many cases have arisen where no justice of the peace or magistrate could be found who has jurisdiction where both of the parties differing as aforesaid reside; in consequence whereof it has been doubted whether the above beneficial enactment can in such cases take effect; and for the remedy thereof it is necessary that the jurisdiction and powers which are by the said Act conferred on the justices or magistrates of the district where both parties reside shall in future be exercised by the justices or magistrates of the district where the party complained against resides: Be it enacted, that in the place of the justices or magistrates of the district where both parties reside the justices or magistrates of the district where the parties complained against reside shall have the said jurisdiction and powers; and whatever acts and duties are by the said Act required to be done by the first-mentioned justices or magistrates, or any one of them, shall be done by the last-mentioned justices or magistrates, or by any one of them; and the said Act shall in all respects be construed as if the words "where the party complained against resides" had been originally inserted in the third section of the said Act instead of the words "within which the parties reside."

Justices having jurisdiction where the party complained against resides, to have jurisdiction in the matter of the said Act.

III. And be it further enacted, that wherever the expression "justice of the peace" occurs in the said Act it shall be construed to mean "magistrate."

Interpretation of "Justice."

ANNO SEXTO ET SEPTIMO VICTORIÆ REGINÆ.

CAP. XL.

An Act to amend the Laws for the Prevention of Frauds and Abuses by Persons employed in the Woollen, Worsted, Linen, Cotton, Flax, Mohair, and Silk Hosiery Manufactures; and for the further securing the Property of the Manufactures and the Wages of the Workmen engaged therein. [1st August, 1843.]

WHEREAS an Act was passed in the session of Parliament held in the eighth and ninth years of King William the Third, intituled "An Act for the further encouragement of the manufacture of lustrings and alomodes within this realm, and for ^{8 & 9 Will. III. c. 36.}

- the better preventing the importation of the same," whereby (amongst other matters therein contained) certain penalties, forfeitures, and punishments therein referred to were imposed upon persons embezzling or otherwise unlawfully selling or receiving, as therein is mentioned, silk delivered by the silk manufacturers to be worked up: and whereas an Act was passed in the first year of the reign of her late Majesty Queen Anne, intituled "An Act for the more effectual preventing the abuses and frauds of persons employed in working up the woollen, linen, fustian, cotton, and iron manufactures of this kingdom:" and whereas the said Act was made perpetual by an Act passed in the ninth year of the reign of her said late Majesty Queen Anne, intituled "An Act for reviving and continuing an Act made in the first year of her Majesty's reign, for the more effectual preventing abuses and frauds of persons employed in the working up the woollen, linen, fustian, cotton, and iron manufactures of this kingdom:" and whereas an Act was passed in the twelfth year of the reign of his late Majesty King George the First, intituled "An Act to prevent unlawful combination of workmen employed in the woollen manufactures, and for better payment of their wages:" and whereas an Act was passed in the thirteenth year of his late Majesty King George the Second, intituled "An Act to explain and amend an Act made in the first year of the reign of her late Majesty Queen Anne, intituled 'An Act for the more effectual preventing the abuses and frauds of persons employed in the working up the woollen, linen, fustian, cotton, and iron manufactures of this kingdom;' and also for extending the said Act to the manufacture of leather:" and whereas an Act was passed in the twenty-second year of the reign of his late Majesty King George the Second, intituled "An Act for the more effectual preventing of frauds and abuses committed by persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, and silk manufactures; and for preventing unlawful combinations of journeymen dyers and journeymen hotpressers, and of all persons employed in the said several manufactures, and for the better payment of their wages:" and whereas another Act was passed in the seventeenth year of the reign of his late Majesty King George the Third, intituled "An Act for amending and rendering more effectual the several laws now in being for the more effectual preventing of frauds and abuses by persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, and silk manufactures; and also for making provisions to prevent frauds by journeymen dyers;" and whereas an Act was passed in the thirty-second year of his late Majesty King George the Third, intituled "An Act for extending the provisions of an Act made in the thirteenth year of the reign of his present Majesty, intituled, An Act to empower the magistrates therein mentioned to settle and regulate the wages of persons employed in the silk manufactures within their respective jurisdictions, to manufactures of silk mixed with other materials; and for the more effectual punishment of buyers and receivers of silk purloined and embezzled by persons employed in the manufacture thereof:" and whereas the provisions of the said Acts have not been effectual to prevent frauds, embezzlements, and abuses by persons employed in the woollen, linen, cotton, flax, mohair, and silk hosiery manufactures; and it is expedient to repeal so much of the said recited Acts as relates to the said manufactures, and to make further provisions in lieu thereof, as well for the benefit and encouragement of trade and manufactures as for the security of the property of manufacturers and the wages of the workmen engaged in the said manufactures: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the commencement of this Act, so much of the said recited Acts, or any of them, as relates to the woollen, linen, cotton, flax, mohair, and silk manufactures, or any of them, or any manufactures whatsoever made of wool, cotton, flax, mohair, or silk materials, whether the same be or be not mixed with each other or with any other materials, shall, so far as respects
- 1 Anne, s. 2.
c. 13.
- 9 Anne, c.
30.
- 12 Geo. I. c.
34.
- 13 Geo. II. c.
8.
- 22 Geo. II.
c. 27.
- 17 Geo. III.
c. 56.
- 32 Geo. III.
c. 44.
- So much of
the said
Acts as re-
lates to the
woollen,
linen, cot-
ton, flax,
mohair,
and silk ma-
nufactures re-
pealed.

the manufactures, trades, occupations, and employments hereinafter mentioned, be and the same are hereby repealed, save and except so far as the same may have repealed any former Acts or enactments.

II. And be it enacted, that if any person whosoever intrusted with any woollen, worsted, linen, cotton, flax, mohair, or silk materials, for the purpose of being prepared, worked up, or manufactured, either by himself or by any person or persons to be employed by or under him, or by himself jointly with any person or persons to be employed with, by, or under him, or for any purpose or work connected with manufacture or incidental thereto, or any parts, branches, or processes thereof, or any tools or apparatus for manufacturing the said materials, shall sell, pawn, purloin, embezzle, secrete, exchange, or otherwise fraudulently dispose of the same materials, tools, or apparatus, or any part thereof, he shall, upon being thereof lawfully convicted by the oath of the owner of such materials, tools, or apparatus, or any part thereof, or of any other credible witness or witnesses, before two or more justices of the peace, forfeit the full value of the same, and also forfeit such penalty, not exceeding ten pounds, together with costs, as to the said justices shall seem meet; and every such forfeiture and penalty shall be applied, under the direction of the convicting justices, in manner following; (that is to say), in the first place, in making such satisfaction to the party injured as the said justices shall think proper; and the remainder, if any, shall be applied in the same manner as is hereinafter directed for the disposal of any other penalty under this Act; and in default of payment of such forfeiture and penalty, with costs, immediately on conviction, or within such period as the justices so convicting may direct, the said justices may issue their warrant to distrain and sell the goods and chattels of the person so convicted, for the amount thereof, and costs; and the proceeds of any distress, after paying the penalty, forfeiture, and costs, and also the costs of such distress, shall be paid over to the person convicted; but if no sufficient distress shall appear or shall be found whereon to levy the said penalty, forfeiture, and costs, the said justices may either immediately or at any time after such conviction, commit any person so convicted to the common gaol or house of correction, to be there imprisoned, with or without hard labour, as to the said justices shall seem meet, for any term not exceeding three calendar months, unless the amount of such forfeiture and penalty, with costs, or so much thereof as shall not have been paid previously to the commencement of such imprisonment, be sooner paid.

III. And be it enacted, that if any person whosoever intrusted with any woollen, worsted, linen, cotton, flax, mohair, or silk materials, for the purpose of being prepared, worked up, or manufactured, either by himself or by any person or persons to be employed by or under him, or by himself jointly with any person or persons to be employed with, by, or under him, or for any purpose or work connected with manufacture or incidental thereto, or any parts, branches, or processes thereof, or with any tools or apparatus for manufacturing the said materials, shall neglect or delay to return the said materials, tools, or apparatus, or any part thereof, for the space of fourteen clear days after being required so to do by the party intrusting him therewith, or by some person on his behalf, by notice in writing to be served upon or left at the last or usual place of abode or business of such person (unless prevented by some reasonable and sufficient cause, to be allowed by the justices before whom he shall be brought), then, and in every such case, all, or so much or so many of the said materials, tools, or apparatus as shall not be returned to the person so intrusting him therewith within the time aforesaid, shall be deemed to be embezzled by the person so neglecting or delaying to return the same; and the person so neglecting or delaying to return the same shall for every such offence be liable to be proceeded against for embezzlement, in the same manner, and subject to the same forfeiture and penalty, with costs, and to be applied in the same manner, as are respectively hereinbefore prescribed and imposed in respect to persons selling, pawning, purloining, embezzling, secreting, exchanging, or otherwise fraudulently disposing of the said materials.

Persons convicted of pawning or embezzling any of the materials here-in particularized to forfeit the value of the same, with penalty and costs.

Application of penalty and forfeiture.

Distrain warrant on non-payment.

Commitment in default of sufficient distress.

Persons neglecting to return materials within a prescribed time to be subject to the same punishment as for embezzlement.

Persons knowingly purchasing or receiving embezzled materials or tools, guilty of a misdemeanor, punishable as after mentioned.

IV. And be it enacted, that any person who shall purchase or take in pawn, or who in any other way shall receive into his premises or possession, any woollen, worsted, linen, cotton, flax, mohair, or silk materials, and whether the same, or any part of the said materials, be or be not wholly or partially wrought, made up, or manufactured into merchantable wares, or any tools or apparatus for manufacturing the same, knowing that such materials, tools, or apparatus are purloined or embezzled or fraudulently disposed of, or that the person from whom he shall purchase, take in pawn, or receive the same is fraudulently or unlawfully disposing thereof, or knowing such person to be employed or intrusted by any other person or persons to work up either by himself or by or with others the materials so purchased, taken in pawn, or received for any other person or persons, and not having first obtained the consent of the person or persons so employing or intrusting him therewith, shall, on conviction by the oath of the owner or of any other credible witness or witnesses, be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned.

Persons knowingly selling, &c., embezzled materials or tools, guilty of a misdemeanor, punishable as after mentioned.

V. And be it enacted, that if any person shall sell, pawn, pledge, exchange, or otherwise unlawfully dispose of, or offer to sell, pawn, pledge, exchange, or otherwise dispose of, any such materials, tools, or apparatus as aforesaid, knowing the same to have been so purloined or embezzled or received from persons fraudulently disposing thereof as aforesaid, he shall, on conviction by the oath of the owner of such materials, tools, or apparatus, or any part thereof, or of any other credible witness or witnesses, be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned.

Justices empowered to issue warrant for apprehension of offenders against this Act, and to commit them for trial.

VI. And be it enacted, that on proof on oath that there is just cause to suspect that any such materials, tools, or apparatus as aforesaid have been fraudulently sold, pawned, pledged, purloined, or embezzled by the person to whom the same were intrusted, or that any such materials, tools, or apparatus have been purchased or received, or sold, pawned, pledged, exchanged, or otherwise unlawfully disposed of, or offered for sale, pawn, pledge, exchange, or other disposal, by any person knowing the same to have been purloined or embezzled or received from some person fraudulently disposing thereof, it shall and may be lawful for any one justice of the peace, and such justice is hereby required to issue his warrant for apprehending any such person, and bringing him before him or some other justice of the peace for examination; and if upon such examination the charge of having fraudulently sold, pawned, purloined, embezzled, or otherwise fraudulently disposed of any such materials, tools, or apparatus, or of having purchased or received, or sold, pawned, pledged, exchanged, or otherwise fraudulently disposed of, or of having offered for sale, pawn, pledge, exchange, or other disposal, any such materials, tools, or apparatus, knowing them to have been purloined or embezzled or received from some person fraudulently disposing thereof, shall be supported by evidence to raise a strong presumption of guilt, such justice shall commit such person to the common gaol, or house of correction, in order that he may be brought forward for trial at the next Petty Sessions, unless he enter into such bail, with two sufficient sureties, as may be required for his appearance before such court on any day to be fixed by such justice.

Workmen neglecting to fulfil their engagements, not finishing their work, or leaving without notice.

VII. And be it enacted, that if any person intrusted, employed, or contracting to prepare, work up, or manufacture, or to have prepared, worked up, or manufactured, either by himself or by any person or persons to be employed by or under him, or by himself jointly with any person or persons to be employed by or under him, any woollen, worsted, linen, cotton, flax, mohair, or silk materials, shall not prepare, work up, or manufacture, or cause to be prepared, worked up, or manufactured, the said materials, and return the same, within seven clear days after the time which shall have been agreed upon between such person and the owner of the said materials, or other the person intrusting him therewith, and in case no such time shall have been so agreed upon, then within seven clear days after being required so to do (unless prevented by some reasonable and sufficient cause, to be allowed by the justices before whom he shall be brought),

or shall leave or return such materials without having performed as he could and ought to have done the work he was employed to perform thereon or thereto, and without the consent of the person intrusting him with such materials as aforesaid, or shall damage the same, or if any person shall contract or engage to work, or be employed to do or perform, or to have done or performed any work, in any of the said manufactures, or connected therewith or incidental thereto, or any parts, branches, or processes thereof, either by himself or by any person or persons to be employed by or under him, and whether such contract or engagement shall be to work or be employed for any person exclusively, or for all or part of his time, or for specific work, or otherwise, and whether such person is to be paid according to the value or amount of the work done, the time employed, or in any other manner whatsoever, and shall neglect to fulfil such contract or engagement, or absent himself from such work or employment before such notice (if any) as shall have been agreed upon between the said parties for determining the said contract or engagement shall have expired, or without giving such notice, or contrary to the terms of such contract or engagement (unless prevented as aforesaid), to be allowed as aforesaid, then and in every such case such person, being thereof lawfully convicted on oath before two or more justices of the peace, shall forfeit any sum not exceeding two pounds as to such justices shall seem **Penalty.** meet, and also, in case the said materials shall be damaged, the amount of the injury done thereto, to be ascertained by the said justices, together with costs; and every such forfeiture shall be applied, under the direction of the justices so convicting, in manner following; (that is to say), in the first place, in making such satisfaction to the party injured as the said justices shall think proper, and the remainder, if any, shall be applied in the same manner as any penalty under this Act; and in default of payment of such forfeiture and costs immediately on conviction, or within such period as the justices so convicting shall direct, the said justices may either immediately, or at any time after such conviction, commit any person so convicted to the common gaol or house of correction, there to be imprisoned, with or without hard labour, as to the said justices shall seem meet, for any term not exceeding two calendar months, unless the amount of such forfeiture and costs be sooner paid.

VIII. And be it enacted, that upon proof on oath before a justice of the peace that there is reasonable cause to suspect that any person has in his possession or on his premises any such materials, tools, or apparatus as aforesaid, which have been purloined, embezzled, or otherwise fraudulently disposed of, it shall be lawful for the said justice, and such justice is hereby required to grant his warrant to search the dwelling-house and premises of such person, and if any such property shall be found therein, to cause such materials, tools, or apparatus, and the person in whose possession or on whose premises the same shall be found, to be brought before him or some other justice of the peace, to be dealt with in the same manner as any person brought before a justice under the enactment next hereinafter contained.

Justice empowered to grant search warrants.

IX. And be it enacted, that every peace officer and constable and every watchman duly appointed by law, during such time as he shall be on duty, shall and may apprehend or cause to be apprehended any person whom he may reasonably suspect of having, or carrying or in any way conveying, at any time after sun-setting and before sun-rising, any such materials, tools, or apparatus as aforesaid, suspected to be purloined, embezzled, or otherwise fraudulently disposed of, and shall lodge such person, together with the property, in a police office or other place of security, in order that he may be brought before a justice of the peace so soon as convenient, who is hereby empowered to discharge such person, or to order his detention until the next court of Petty Sessions, unless he enter into such bail, with two sufficient sureties, as may be required, for his appearance before such court on any day to be fixed by the said justice; and if the person so apprehended in the act of committing any such offence as aforesaid, or of conveying any such property as last aforesaid, shall not produce before the said court the person duly entitled to dispose of such property from whom he

Peace officers to apprehend suspected persons.

Persons apprehended, and not proving that the

property is
honestly
come by
to be pun-
ishable.

Adjourn-
ment of
time for
trial al-
lowed, on
prisoner
finding
bail.

Punish-
ment of
persons
convicted
of misde-
meanor.

Disposal of
unclaimed
property
which has
been seized.

bought or received the same, or shall not give an account to the satisfaction of the said court that the property is honestly come by, then the person so apprehended shall be deemed and adjudged guilty of a misdemeanor, and be punished in manner hereinafter mentioned, although no proof shall be given as to whom such property belongs.

X. And be it enacted, that it shall be competent for the party accused, in all proceedings brought under authority of this Act, to move for and obtain an adjournment of the time fixed for trial for such a reasonable time as may appear to the court to be necessary for the party accused to produce the person duly entitled to sell or dispose of the said property of whom he bought or received the same, or evidence respecting the same; but the party accused, and requesting such adjournment, shall be detained in custody or committed to prison, unless he enter into such bail, with two sufficient sureties, as shall be required for his appearance before such court at such time and place as shall be appointed.

XI. And be it enacted, that any person who shall be deemed and adjudged guilty of a misdemeanor, agreeably to any of the provisions of this Act, shall, in addition to being deprived without compensation of any such materials, tools, and apparatus which have been purloined, embezzled, or otherwise fraudulently disposed of, and which shall have been found in his possession, forfeit any sum not exceeding twenty pounds for each offence, together with costs, upon being thereof lawfully convicted by the oath of one or more credible witness or witnesses, before two or more justices of the peace; and every such forfeiture shall be applied, under the direction of the justices so convicting, in manner following; (that is to say), in the first place, in making such satisfaction to the party injured as the said justices shall think fit, and the remainder, if any, shall be applied in the same manner as is hereinafter directed for the disposal of any other penalty under this Act; and in default of payment of such forfeiture and penalty, with costs, immediately on conviction, or within such period as the court shall direct, any justice or justices may issue his or their warrant to distrain and sell the goods and chattels of the person so convicted, for the amount thereof, and costs; and the proceeds of any distress, after paying the forfeiture and costs, and also the costs of such distress, shall be paid over to the person convicted; but if no sufficient distress shall appear or shall be found whereon to levy the said forfeiture and costs, any justice or justices may, either immediately or at any time after such conviction, commit any person so convicted to the common gaol or house of correction, to be imprisoned there, with or without hard labour, as to the said court shall seem meet, for any term not exceeding four calendar months, unless the amount of such forfeiture and costs, or so much thereof as shall not have been paid previously to the commencement of such imprisonment, be sooner paid.

XII. And be it enacted, that where no proof shall be given at the time of conviction of the ownership of property found in the possession of a person convicted under this Act, the justices or court shall cause the property so found to be deposited in some safe place for any time not exceeding thirty days, and shall, if the property be of sufficient value to pay the expenses thereof, order an advertisement to be inserted in one or more of the public newspapers of the town or city where, or nearest the place where, the same was found, and by fixing a notice on some public place describing such property, and where the same may be inspected, or in case of the said property not being of sufficient value to pay the said expenses, then by fixing such notice as aforesaid only; and in case any person shall prove his own or his employer's ownership or property therein upon oath to the satisfaction of a justice, restitution of such property shall be ordered to the owner thereof, after paying the reasonable cost of removing, depositing, advertising, and giving notice of the same; but if no ownership be proved to such property, the justice shall, at the termination of thirty days, order such property to be sold, and after deducting the charges aforesaid, with the charges of sale, shall order the residue to be applied in the same manner as is hereafter directed for the disposal of any other penalty under this Act.

XIII. And be it enacted, that it shall be lawful for the owner of any such materials as aforesaid, or any other person duly authorized by him, or other the person who shall have so intrusted such materials, from time to time, as occasion shall require, to demand leave of entrance and enter at all reasonable hours in the daytime into the shops or outhouses of any person employed to work up or manufacture, either by himself or by any other person under him, any of the said materials, or other place or places where the work shall be carried on, and there to inspect the state and condition of such materials; and in case of refusal or neglect by any such person or persons so employed to permit such entrance or inspection, such person shall, for so refusing to permit such entrance or inspection, forfeit any sum not exceeding twenty shillings, as the justices before whom he shall appear or be brought shall think proper, to be applied in the same manner as is hereinafter directed for the disposal of any other penalty under this Act: Provided always, that nothing herein contained shall authorize any such owner or other person as aforesaid to inspect any frame, tools, or apparatus wherewith such materials are worked up, in case such frame, tools, or apparatus comprise any new invention or improvement not disclosed to the public.

Owner of materials may inspect shops, &c., of persons employed.

Penalty for refusal.

Proviso.

XIV. And be it enacted, that if any manufacturer, agent, or any other person in his employment or service, shall make oath before a justice of the peace that any such materials, tools, or apparatus as aforesaid have been intrusted to any person as aforesaid, and that he has absconded, or that the deponent has just cause to suspect and does suspect that such person is about to abscond, it shall be lawful for such justice, and he is hereby required to issue his warrant to apprehend such person, and bring him before some other justice of the peace; and if such person shall have absconded, or shall not forthwith give security, to be approved of by the said justice, for the return in a finished state of all such materials so intrusted to him within such time as shall be then agreed on, such justice shall by warrant order any constable, with his assistants, to enter the house or other premises of such person, and take possession of all such materials, tools, or apparatus so delivered to him as aforesaid, and to bring the same before the said justice or any other justice, when such justice shall direct the same to be delivered to the owner, or his agent or servant, or other person duly authorized by him, and shall forthwith release the person in custody; but if all such materials, tools, or apparatus shall not be found in the house or other premises or the possession of such person, or shall not be produced before such justice, such person shall be deemed and taken to have purloined or embezzled such materials, tools, or apparatus, or such part thereof as shall not be found or produced, and shall be liable to any of the punishments awarded for such offence.

Warrant may be granted by justice on complaint on oath that person is about to abscond.

XV. And be it enacted, that if any person shall receive any of the aforesaid materials in a fictitious name, in order to be manufactured, every such person so offending, and being convicted thereof on the oath of one or more credible witness or witnesses before two or more justices, shall for every such offence be liable to the same punishment as is hereinbefore directed in respect to persons not fulfilling their engagements.

Receiving goods in fictitious name.

XVI. And be it enacted, that in cases where any person shall have been committed for purloining, embezzling, or fraudulently disposing of all or any part of such materials, tools, or apparatus as aforesaid, which may have been intrusted to him, or shall have been convicted of any other offence against any of the provisions of this Act, it shall be lawful for the justice who so committed such person, or for any justice or court before whom he has been convicted for that or any other offence, and he or they is or are hereby required to issue his or their warrant authorizing a constable, with his assistants, to enter the house and premises of such person, and take possession of all such property so intrusted as shall be found therein, and to bring the same before the said justice or court, when the said justice or court shall direct the same to be delivered to the manufacturer, agent, or person duly authorized to receive the same.

Justice to issue warrant to constable to take possession of property intrusted to any person committed for embezzlement, &c.

Recovery
of wages
and sums
due for
work.

XVII. And be it enacted, that if any manufacturer or other party employing, contracting, or engaging with any person for any work in any of the said manufactures, or connected therewith or incidental thereto, or any parts, branches, or processes thereof, and whether such work is to be performed by the said person, or by any person or persons to be employed by or under him, or by himself jointly with any person or persons to be employed with, by, or under him, and whether the contract or engagement shall be to work or be employed for such manufacturer or other party exclusively, or for all or part of his time, or for specific work or otherwise, and whether such person is to be paid according to the nature or amount of the work done, the time employed, or any other manner, shall not from time to time pay and discharge all such sums of money, wages, and hire as shall be justly due and payable to any such person, it shall be lawful for a justice of the peace, on complaint made for that purpose, to summon such manufacturer or other party to appear at a time and place to be named in such summons, and for any two or more justices of the peace to hear and determine such complaint, and order payment of such sum as shall appear to such justices to be justly due and payable, together with costs for loss of time and recovering the same, and in default of payment immediately, or within such period as the said justices shall direct, the said justices shall issue their warrant to levy the same by distress and sale of the goods and chattels of the said manufacturer or other party; and the said justices, if they shall think fit, may also, by order in writing, authorize such person to return his work unfinished, in which case such person shall not be liable to the penalties awarded by this Act.

Frames,
&c., not be-
longing to
workmen
not liable
to be seized
for rent or
debt owing
by work-
men.

XVIII. And be it enacted, that no frame, loom, or machine, materials, tools, or apparatus, which shall be intrusted for the purpose of being used or worked in any of the said manufactures, or any work connected therewith or incidental thereto, or any parts, branches, or processes thereof, whether such frame, loom, or machine, materials, tools, or apparatus, shall or shall not be rented or taken by the hire, shall at any time or times hereafter be distrained or seized, or be liable to be distrained or seized, for rent or for debt, or under any execution or other proceedings whatever, unless the rent be due or the money be owing by the owner of the said frame, loom, or machine, or of the said materials or tools or apparatus aforesaid, or of any part thereof respectively.

In case of
refusal to
restore
frames, &c.,
unlawfully
seized, jus-
tice may
order their
restoration.

XIX. And be it enacted, that if any landlord or other person, by virtue of any distress, warrant, execution, or other proceedings for rent in arrear, or money due or alleged to be due by any person whomsoever, shall distrain, seize, carry off, sell, or otherwise dispose of any frame, loom, or machine, materials, tools, or apparatus, belonging to any other person, which shall have been intrusted for the purpose of being used or worked in any of the said manufactures, or any work connected therewith or incidental thereto, or any parts, branches, or processes thereof, and whether the same shall or shall not be rented or taken by the hire, or shall distrain, seize, carry off, sell, or otherwise dispose of any materials as aforesaid, or any tools or apparatus as aforesaid, belonging to any other person, and shall refuse to restore possession of all such frames, looms, machines, tools, or apparatus to the person owning, letting, or intrusting the same, when demanded by him, or some person duly authorized by him, of the said landlord or other person, or the person acting as agent or bailiff of such landlord or other person, it shall and may be lawful to and for any justice of the peace, upon complaint on oath before him, to summon the said landlord or other person to appear before any two or more justices of the peace to answer the said complaint, and on proof of the said offence the said justices may thereupon order the property so seized, distrained, carried off, or sold, to be forthwith restored, and issue their warrant to a constable or constables empowering him or them to seize the said property wherever the same shall be found, and deliver possession thereof to the person owning, letting, or intrusting the same, and to levy, by distress and sale of the goods of the said landlord or other person, the costs of obtaining the said order, and recovering and obtaining possession of the said

property; and in case the said property cannot be found and seized within a time not exceeding twenty-one days, to be limited in the said warrant, or in case the said property shall have been damaged by the same having been distrained, seized, carried off, or sold, then it shall be lawful for such two justices, or any other two justices, on proof thereof (the said landlord or other person having been first summoned by a justice), to issue their warrants to levy by distress and sale of the goods and chattels of such landlord or other person the full value of the said property, or the amount of such damage, as the case may be, together with all costs of recovering and levying the same.

XX. And be it enacted, that if any person or persons shall obliterate, efface, or alter the owner's name or initials, or other distinguishing mark on any frame, loom, or machine, or any bar or part thereof, or the moulds thereof, without the order or authority of the owner thereof, he shall, on conviction thereof before two justices of the peace, forfeit any such sum not exceeding two pounds as such two justices shall order and direct, to be applied, in the first place, in paying the costs of the proceedings before such justices, and the surplus, if any, to the party injured; and in default of payment of such forfeiture immediately on conviction, or within such period as the justices so convicting shall order and direct, then the said justices may, either immediately or at any time after such conviction, commit any person so convicted to the common gaol or house of correction, there to be imprisoned, with or without hard labour, as to the said justices shall seem meet, for any term not exceeding two calendar months, unless the amount of such forfeiture be sooner paid.

Penalty for
obliterating
mark on
machine.

XXI. And for the discouragement of frivolous and vexatious informations and prosecutions under this Act, be it enacted, that it shall be lawful for any justices or court of Petty Sessions before whom any case under this Act is tried to award costs to the defendant, with an allowance for his loss of time, in case of acquittal, to be paid by the prosecutor; and also, if it shall appear to such justices or court that the charge was made from a malicious, vexatious, or frivolous motive, or in case the party shall be charged with embezzlement of materials, by reason of any deficiency in the weight of the materials which he shall have returned to the person by whom they were intrusted to such party, as compared with the weight of the materials received, and it shall be proved upon the hearing of the case that such materials were knowingly and fraudulently delivered to the party charged whilst in a damp state, so that the apparent weight thereof was thereby increased, it shall be lawful for such justices or court to award to the defendant such further sum of money, not exceeding twenty pounds, as to such justices or court shall seem fit, to be paid by such prosecutor as a compensation for the injury done; and in default of payment such costs and allowances and compensations may be levied by distress and sale of the prosecutor's goods.

Power to
award costs
to defend-
ant.

XXII. And be it enacted, that where any person shall be charged on oath with any offence punishable under this Act, one justice may receive the original information and summon the person charged to appear before any two justices of the peace at a time and place to be named in such summons, and if he shall not appear accordingly then the justices there present may either proceed to hear and determine the case *ex parte*, or any of such justices may issue a warrant for apprehending such person, and bringing him to answer the said charge before any two or more justices, or the justice before whom the charge shall be made may, if he shall so think fit, issue such warrant in the first instance, without any previous summons, and commit the person so charged to prison, in order that he may be brought forward for trial (unless he enter into such bail as may be required by such justice for his appearance at such time and place as shall be appointed); and the justices before whom the person charged shall appear or be brought shall proceed to hear and determine the case; and after adjudication all and every the subsequent proceedings to enforce obedience thereto, whether respecting the penalty, forfeiture, distress, imprisonment, costs, or other matter or thing relating thereto, may be enforced by any one of the said justices.

Mode of
proceeding
to enforce
appearance.

After ad-
judication
proceedings
may be en-
forced by
one of the
justices.

XXIII. And be it enacted, that every summons to be granted by a justice of

Service of summons.	the peace under this Act may be served by delivering a copy thereof to the party, or by delivering such copy at the party's usual place of abode to some inmate thereat, and explaining the purport thereof to such inmate.
Limitation of time within which pro- ceedings to be com- menced. Prosecutor, &c., a com- petent witness. What jus- tices to have juris- diction.	XXIV. Provided always, and be it enacted, that every complaint and prosecution under this Act shall be commenced within six calendar months after the commission of the offence, unless the offending party shall have in the meantime left the country, and not otherwise; and that the informer or prosecutor, or any person aiding, abetting, party or privy to the commission of the offence charged, shall in every case under this Act be deemed a competent witness to prove the offence.
Proviso.	XXV. And be it enacted, that in all complaints, warrants, proceedings, or prosecutions under this Act, any justice or justices of the peace, and the court of Petty Sessions for the county, city, borough, or place where the offence shall be committed or the complaint arise, or where the said materials, frame, loom, machine, tools, or apparatus shall be given out or intrusted, lent or hired, or where the manufacturer, master, and employer shall carry on his trade or business, shall have full power and authority to act, and to hear and determine such complaint, warrant, proceeding, or prosecution, and do all other matters incident thereto: Provided always, that in all convictions or adjudications under this Act, one at least of the convicting or adjudicating justices shall be a person not engaged in any manufacture, trade, occupation, or employment to which this Act extends, and shall not be the father, son, or brother of any such person.
Application of penalties.	XXVI. And be it enacted, that all forfeitures and penalties upon convictions under this Act not specially provided for shall be paid to the sheriff or other proper officer of the county, city, borough, or place in which such conviction shall take place, for her Majesty's use, and shall be returned to the court of Quarter Sessions, under the provisions of an Act passed in the third year of the reign of his late Majesty King George the Fourth, intituled "An Act for the more speedy return and levying of fines, penalties, and forfeitures, and recognizances estreated."
8 Geo. IV. c. 46.	XXVII. And be it enacted, that in every case of summary conviction or adjudication under this Act, not specially provided for, where the sum forfeited or adjudged to be paid, or which shall be imposed as a penalty, by any justice or justices of the peace, together with costs, if awarded, which costs such justice or justices is and are hereby authorized to award, if he or they shall think fit, in any proceeding, adjudication, or conviction under this Act, shall not be paid immediately, or within such period as the said justice or justices shall direct, or where a warrant of distress shall be issued, and no sufficient distress shall be found, it shall be lawful for the convicting justice or justices to commit the offender to the common gaol or house of correction, there to be imprisoned, with or without hard labour, according to the discretion of the said justice or justices, for any term not exceeding two calendar months, when the amount of the sum forfeited or adjudged to be paid, or of the penalty imposed, together with costs, shall not exceed five pounds, and for any term not exceeding three calendar months in any other case, unless the amount and costs be sooner paid.
Scales of imprison- ment on summary convictions not specially provided for.	XXVIII. And be it enacted, that the justices before whom any person shall be convicted of any offence against this Act may cause the conviction to be drawn up on paper or parchment in the following form of words, or in any other form of words to the like effect, and with such variations as the case shall require; (that is to say),
Form of conviction.	

"To wit. } BE it remembered, that on the day of
 " } in the year of our Lord at in the
 " } of C. D. is convicted before us, A. B. and J. P.,
 "two of her Majesty's justices of the peace for the said for that
 "he the said C. D. [*here specify the offence, and the time and place where the same*
 "*was committed, as the case may be*], and we do adjudge that the said C. D. shall
 "for the said offence forfeit and pay [*here state the penalty actually imposed, or the*

"penalty and also the sum adjudged as the value of the articles or the amount of the injury, as the case may be], and also pay the sum of _____ for costs. [if so ordered]; and we direct that the sum of _____ shall be paid to E. F., the party aggrieved, on the _____ day of _____ [instant or next ensuing], and that the sum of _____ shall, on the _____ day of _____ [instant, or next ensuing], be paid and applied according to the direction of the statute in such case made and provided [or, as the case may be], and that the sum of _____ for costs shall be paid to the complainant [if so ordered]. Given under our hands and seals, the day and year first above written."

XXIX. And be it enacted, that in all cases of summary conviction under this Act, where the sum adjudged to be paid shall exceed twenty shillings, or the imprisonment shall exceed one calendar month, any person who shall think himself aggrieved by any such conviction may appeal to the next court of General or Quarter Sessions which shall be held for the county, city, borough, or place where such conviction shall have been made (such person at the time of such conviction giving to the justices so convicting, or to the justice so presiding at the court of Petty Sessions at which such conviction shall take place, notice in writing of his intention to appeal, and also entering into a recognizance at the time of such notice, with two sufficient sureties, conditioned personally to appear at the said Sessions, and to try such appeal, and to abide the judgment of the court thereupon, and to pay such costs as shall by the court be awarded); and upon such notice being given and such recognizance being entered into, the justice or justices before whom the same shall be entered into shall liberate such person, if in custody, and the court at such Sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs, to either party, as to the court shall seem meet; and in case of the dismissal of the appeal or the confirmation of the conviction the said court shall order and adjudge the offender to pay such costs, if any, as shall be awarded, and shall, if necessary, issue process for enforcing payment of the same; and it shall be lawful for the said court, or, on the production of a certificate under the hand of the clerk of the peace for the said county, city, borough, or place, or his deputy, for any justice or justices of the peace for such county, city, borough, or place, either immediately or at any time thereafter, to issue a warrant of distress and sale, or a warrant for the apprehension and commitment of such offender for such period of time as, together with the days during which such person so convicted shall have been imprisoned, if any, previously to being discharged by reason of such appeal, shall amount to the same period or term of imprisonment for which such person was adjudged to be imprisoned at the time of conviction, or to issue a warrant of distress and sale, and if there be no sufficient distress, a warrant of apprehension and commitment, as the case may require, in like manner, in all respects, as any justice or justices could or might have done in case no notice of appeal had been given.

XXX. And be it enacted, that no order or conviction, or proceedings touching the same respectively, nor adjudication made or appeal therefrom, shall be quashed for want of form, or be removed by certiorari or otherwise into any of her Majesty's superior courts of record; and that no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that it is founded on a conviction, and there be a good and valid conviction to sustain the same; and that where any distress shall be made for levying any money by virtue of this Act, the distress itself shall not be deemed unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the summons, warrant, conviction, warrant of distress, or other proceedings relating thereto, nor shall the party distraining be deemed a trespasser from the beginning on account of any irregularity afterwards committed by him, but the person aggrieved by such irregularity may recover full satisfaction for the special damage (if any) upon an action on the case.

Appeal to
Quarter
Sessions in
certain
cases.

Proceedings
not to be
quashed for
want of form,
or be re-
moved by
certiorari.

Limitation of actions against persons acting in execution of this Act.	XXXI. And be it enacted, that for the protection of persons acting in the execution of this Act, all actions and prosecutions for damage to be commenced against any person for anything done in pursuance of this Act, shall be laid and tried in the county where the fact was or is charged to have been committed, and shall be commenced within two calendar months after the fact committed, and not otherwise, and notice in writing of such action and of the cause thereof shall be given to the defendant one calendar month at least before the commencement of the action; and in any such action the defendant may plead the general issue, or, in case of any action of replevin, may avow generally that the goods and chattels in question were taken under and by virtue of this Act, and may give this Act and the special matter in evidence at the trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, nor if a sufficient sum of money shall have been paid into court after such action brought, by or on behalf of the defendant or avowant: Provided always, that in all such actions of damages the plaintiff shall be bound to establish, not merely that damages have been suffered by him, but that the same have been wilfully and maliciously caused by the defendant or avowant.
General issue.	
Tender of amends.	
Offences committed before this Act.	XXXII. And be it enacted, that nothing in this Act contained shall extend to any person for any offence committed against the said hereinbefore recited Acts or any of them before the passing of this Act, but every such offender shall and may be prosecuted and punished in the same manner as if this Act had not been made.
This Act not to extend to Scotland or Ireland. To what trades this Act shall extend.	XXXIII. And be it enacted, that nothing in this Act contained shall extend to Scotland or Ireland, or be construed to extend to repeal any Act or statute, or part thereof, now in force, and not repealed by this Act.
	XXXIV. And be it enacted that this Act shall not extend to or be construed to extend to any manufacture, trade, occupation, or employment, except only the manufactures, trades, occupations, and employments following (that is to say), the manufacture of woollen, worsted, linen, cotton, flax, mohair, or silk materials in, on, or by the stocking-frame, warp machine, or any other machine employed in the manufacture of frame-work, knitted or looped fabrics, and every trade, occupation, operation, or employment whatsoever connected with or incidental to the manufacture of stockings, gloves, and other articles of hosiery.
Construction of terms.	XXXV. And be it enacted, that in all cases under this Act the singular is to include the plural, and the masculine the feminine; and in an indictment or information for offences against the property of partners, joint stock companies, or trustees, it shall be sufficient to lay the ownership in the name of one partner or trustee and another or others; that the words "woollen, worsted, linen, cotton, flax, mohair, or silk materials," shall be construed to extend to any of the said materials mixed with each other or with any other material or materials; and that the words "manufacture" and "work" shall extend to all trades, occupations, operations, and employments whatsoever connected with or incidental to the manufacture of any of the said materials, or any parts, branches, or processes thereof, and likewise to such materials, whether the same or any part thereof be or be not in the whole or in part first wrought, made up, or manufactured or converted into merchantable wares.
Commencement of Act.	XXXVI. And be it enacted, that this Act shall commence on the first day of August, one thousand eight hundred and forty-three.
Act may be amended this session.	XXXVII. And be it enacted, that this Act may be amended or repealed by any Act to be passed in this present session of Parliament.

ANNO OCTAVO ET NONO VICTORIÆ REGINÆ.

CAP. LXXVII.

An Act to make further Regulations respecting the Tickets of Work to be delivered to Persons employed in the Manufacture of Hosiery, in certain cases. [4th August, 1845.]

WHEREAS by an Act passed in the fifth year of the reign of King George the Fourth, intituled "An Act to consolidate and amend the laws relative to the arbitration of disputes between masters and workmen," it was enacted, 5 Geo. IV. c. 96. amongst other things, that "with every piece of work given out by the manufacturer to a workman to be done there shall (if both parties are agreed) be delivered a note or ticket in such form as the said parties shall mutually agree upon:" and whereas it is expedient that, so far as relates to persons employed in the woollen, worsted, linen, cotton, and silk hosiery manufactures, such further provision should be made for delivery to them of a note or ticket of work as hereinafter is expressed: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the first day of January in the year one thousand eight hundred and forty-six, when any manufacturer of hosiery, or the agent of any such manufacturer, gives out to a workman the materials to be wrought, such manufacturer or agent shall at the same time deliver to such workman a printed or written ticket, signed by such manufacturer, containing the particulars of the agreement between such manufacturer and such workman, as in the schedule to this Act annexed; and such manufacturer or agent delivering such ticket shall make or cause to be made, and shall preserve until the work contracted to be done shall have been completed or paid for, a duplicate of such note or ticket.

Manufacturer to deliver with materials a ticket of work.

II. And be it enacted, that in the event of any dispute between the manufacturer or his agent and the workman, such ticket, and the said duplicate thereof, shall be required to be produced, and shall, together or either of them, be evidence of all things mentioned therein or respecting the same. Ticket to be evidence.

III. Provided always, and be it enacted, that where the subject of dispute relates to the alleged improper or imperfect execution of any work delivered to a manufacturer or his agent, such piece of work shall be produced in order to adjudication, or if not produced shall be deemed and taken to have been sufficiently and properly executed. When dispute arises as to imperfect execution the work to be produced.

IV. And be it enacted, that if any manufacturer or agent shall neglect or refuse to deliver such ticket to such workman as aforesaid with the materials so given out, and if such workman shall complain thereof to any justice of peace having jurisdiction in the place where the materials shall have been delivered out or where the workman shall reside, such justice may summon such manufacturer or agent to attend before two justices at a time or place appointed for hearing the complaint, and set forth in the summons; and if the person to whom such summons so directed appears according to the tenor thereof, or if he does not appear, and the due service of the summons is proved, the said justices may proceed to hear and determine the complaint; and if such neglect or refusal as aforesaid be proved, either by the confession of the party complained against, or by the oath of the complainant or of any other credible witness or witnesses, such justices may convict such offender, and may upon such conviction adjudge him to pay such penalty not exceeding five pounds, together with the costs attending the conviction, as such justices shall think fit, and the party so adjudged to pay such penalty and costs shall pay the same accordingly: Provided always, that in all convictions of adjudications under this Act one at least of the convicting or adjudicating justices shall be a person not engaged in any manu- Penalty on manufacturer for non-delivery of ticket.

	facture, trade, occupation, or employment to which this Act extends, and shall not be the father, son, or brother of any such person.
Power of summoning witnesses.	V. And be it enacted, that if any of the parties to the said complaint shall make oath before any justice having cognizance of such complaint that he or she believes that the attendance of any person as a witness will be material to the hearing of such complaint, such justice may summon such person, having been paid or tendered a reasonable sum for his expenses, to appear and give evidence on oath at a time and place set forth in the said summons; and if any person so summoned shall not appear at the time and place set forth in the said summons, and shall not make excuse for the default to the satisfaction of the justices there present, and if the due service of the summons be proved, or if such person appearing according to the summons shall not submit to be examined as a witness, then such justices may adjudge such person so making default in appearing or refusing to give evidence to pay such penalty not exceeding two pounds as such justices shall think fit, and the party so adjudged to pay such penalty shall pay the same accordingly.
Service of summons.	VI. And be it enacted, that every summons required by this Act shall be served by delivering the same to the person summoned, or by leaving the same at his or her usual place of abode, twenty-four hours at least before the time appointed by the summons for such person to appear.
Levying and application of penalty.	VII. And be it enacted, that if any such penalty or costs so adjudged by any justices to be paid is not paid immediately upon adjudication, such justices may issue their warrant to distrain and sell the goods and chattels of the person so adjudged to pay the same, for the amount thereof, with costs; and the proceeds of such distress, after paying the penalty and costs, and the costs of such distress and sale, shall be paid over to the person convicted; and the said penalty shall be paid over to the sheriff or other proper officer of the county, city, borough, or place in which such conviction shall take place, for her Majesty's use, and shall be returned to the court of Quarter Sessions, under the provisions of an Act passed in the third year of the reign of King George the Fourth, intituled "An Act for the more speedy return and levying of fines, penalties, and forfeitures, and recognizances estreated."
8 Geo. IV. c. 46.	VIII. And be it enacted, that no order or conviction, or proceeding touching the same respectively, shall be quashed for want of form, or be removed by certiorari or otherwise into any of her Majesty's superior courts of record; and that when any distress shall have been made for levying any money by virtue of this Act the distress itself shall not be deemed unlawful, nor the party making the same a trespasser, on account of any defect or want of form in the summons, warrant, conviction, warrant of distress, or other proceedings in relation thereto, nor shall the party distraining be deemed a trespasser from the beginning on account of any irregularity afterwards committed by him, but the person aggrieved by such irregularity may recover full satisfaction for special damage (if any) by action on the case.
Interpretation of Act.	IX. And be it enacted, that the word "manufacturer" in this Act shall be understood to mean any person furnishing the materials of work to be wrought into hosiery goods, to be sold or disposed of on his own account, and the word "agent" to include any person conveying or delivering the same to the workman, and the word "workman" any person actually employed in the manufacture of the same.
Alteration of Act.	X. And be it enacted, that this Act may be amended or repealed by any Act to be passed in the present session of Parliament.

SCHEDULE.

If the material to be manufactured be into Stockings:—

Gauge.	What kind of material.
Ribbed or plain.	Size.

Jacks in width.	Wrought heels or cut.
Mark.	Wrought feet or cut.
Length of leg.	Turnings in leg.
Length of foot.	Wetted or not.
Narrowings in leg.	Weight per dozen.
Narrowings in heel.	Price per dozen pair of making legs.
Narrowings in gusset.	Price per dozen pair of making feet.
Narrowings in toe.	Name of party putting out the work.
Dumps or clocks.	Name of artificer.
Bound heels or toes.	

If the material to be manufactured be into Socks:—

Gauge.	Narrowings in heel.
Ribbed or plain.	Narrowings in gusset.
What kind of material.	Narrowings in toe.
Size.	Cut or wrought heels.
Jacks in width.	Cut or wrought feet.
Mark.	Price per dozen pair.
Length of leg with top.	Name of party putting out the work.
Length of foot.	Name of artificer.

If the material to be manufactured be into Gloves:—

Gauge.	What kind of welts.
Ribbed or plain.	Plaited or not.
What kind of material.	What figure in back of hand.
Size.	Weight per dozen.
Jacks in width of hand.	Price per dozen pair of making hands.
Jacks in width of finger.	Price per dozen pair of making fingers.
Mark.	Name of party putting out the work.
Length of hand.	Name of artificer.
Length of finger.	

If the material to be manufactured be into Shirts:—

Gauge.	Length of sleeve.
Ribbed or plain.	Fashioned or not.
What kind of material.	Wetted or not.
Size.	Weight per dozen.
Jacks in width of body.	Price per dozen of making bodies.
Jacks in width of sleeve.	Price per dozen pair of making sleeves.
Mark.	Name of party putting out the work.
Length of body.	Name of artificer.

If the material to be manufactured be into Caps:—

Gauge.	Striped or plain.
Ribbed or plain.	Weight per dozen.
Material.	Price per dozen.
Jacks in width.	Name of party putting out the work.
Fashion.	Name of artificer.

If the material to be manufactured be into any other description of Hosiery:—

Gauge.	Price.
Length.	Fashion.
Width.	Name of party putting out the work.
Weight.	Name of artificer.

ANNO OCTAVO ET NONO VICTORIÆ REGINÆ.

CAP. CXXVIII.

An Act to make further Regulations respecting the Tickets of Work to be delivered to Silk Weavers in certain Cases.

[9th August, 1845.]

5 Geo. IV. c. 98. WHEREAS by an Act passed in the fifth year of the reign of King George the Fourth, intituled "An Act to consolidate and amend the laws relative to the arbitration of disputes between masters and workmen," it was enacted, amongst other things, that "with every piece of work given out by the manufacturer to a workman to be done there shall (if both parties are agreed) be delivered a note or ticket in such form as the said parties shall mutually agree upon:" And whereas it is expedient that, so far as relates to silk weavers, such further provision should be made for delivery to them of a note or ticket of work as hereinafter is expressed: Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, that from and after the first day of January in the year one thousand eight hundred and forty-five, when any manufacturer of silk goods or of goods made of silk mixed with other materials, or the agent of any such manufacturer, gives out to a weaver of such goods a piece of warp to be woven, such manufacturer or agent shall at the same time deliver to such weaver (unless both parties shall by writing under their respective hands agree to dispense therewith) a printed or written ticket, signed by such manufacturer or agent, containing the following particulars of the agreement between such manufacturer or agent and such weaver; (that is to say),

Manufac-
turer to
deliver with
warp a
ticket of
work.

The count or richness of the warp or cane.

The number of shoots or picks required in each inch.

The number of threads of weft to be used in each shoot.

The name of the manufacturer, or the style of the firm under which he carries on business.

The weaver's name, with the date of the engagement.

And the price in sterling money agreed on for executing each yard imperial standard measure of thirty-six inches of such work in a workmanlike manner.

And such manufacturer or agent delivering such ticket shall make or cause to be made, and shall preserve until the work contracted to be done shall have been completed or paid for, a duplicate of such note or ticket.

Ticket to be
evidence in
cases of dis-
pute;

II. And be it enacted, that in the event of any dispute between the manufacturer or his agent and the workmen, such ticket and the said duplicate thereof shall be required to be produced, and shall, together or either of them, be evidence of all things mentioned therein, or respecting the same.

and work to
be produced
in order to
adjudication.

III. Provided always, and be it enacted, that where the subject of dispute relates to the alleged improper or imperfect execution of any work delivered to any manufacturer or his agent, such piece of work shall be produced, in order to adjudication, or if not produced shall be deemed and taken to have been sufficiently and properly executed.

Power of
summoning
witnesses.

IV. And be it enacted, that if any of the parties to the said complaint shall make oath before any justice having cognizance of such complaint that he or she believes that the attendance of any person as a witness will be material to the hearing of such complaint, such justice may summon such person, having been paid or tendered a reasonable sum for his expenses, to appear and give evidence on oath before him at a time and place set forth in the said summons; and if any person so summoned shall not appear at the time and place set forth in the said summons, and shall not make excuse for the default to the satisfaction of such justice, and if the due service of the summons be proved, or if such person

appearing according to the summons shall not submit to be examined as a witness, then such justice may adjudge such person so making default in appearing or refusing to give evidence to pay such penalty not exceeding five pounds, as such justice shall think fit, and the party so adjudged to pay such penalty shall pay the same accordingly.

V. And be it enacted, that every summons required by this Act shall be served by delivering the same to the person summoned, or by leaving the same at his or her usual place of abode, twenty-four hours at least before the time appointed by the summons for such person to appear. Service of
summons.

VI. And be it enacted, that if any such penalty or costs so adjudged by any justice to be paid is not paid immediately upon adjudication, such justice may issue his warrant to distrain and sell the goods and chattels of the person so adjudged to pay the same for the amount thereof, with costs; and the proceeds of such distress, after paying the penalty and costs, and the costs of such distress and sale, shall be paid over to the person convicted; and the said penalty shall be paid over to the sheriff or other proper officer of the county, city, borough, or place in which such conviction shall take place, for her Majesty's use, and shall be returned to the court of Quarter Sessions, under the provisions of an Act passed in the third year of the reign of King George the Fourth, intituled "An Act for the more speedy return and levying of fines, penalties, and forfeitures, and recognizances estreated." Levying and
application
of penalty.

8 Geo. IV. c.
46.

VII. And be it enacted, that if any silk manufacturer or other party employing, contracting, or engaging with any person for any work in any branch of the said manufacture, or connected therewith or incidental thereto, or for specific work, or otherwise, and whether such person is to be paid according to the nature or amount of the work done, the time employed, or any other manner, shall not from time to time pay and discharge all such sums of money and wages as shall be justly due and payable to any such person, it shall be lawful for a justice of the peace, on complaint made for that purpose, to summon such manufacturer or other party to appear at a time and place to be named in such summons, and for any two or more justices of the peace to hear and determine such complaint, and order payment of such sum as shall appear to such justices to be justly due and payable, together with costs for loss of time and recovering the same, and in default of payment immediately, or within such period as the said justices shall direct, the said justices shall issue their warrant to levy the same by distress and sale of the goods and chattels of the said manufacturer or other party; and the said justices, if they shall think fit, may also, by order in writing, authorize such person to return his work unfinished; and such justices shall also fine such manufacturer or other party for such neglect of payment, if the first offence five pounds, and for the second ten pounds, and five pounds extra for every succeeding offence, unless the said manufacturer or other party shall deliver to the said person employed a notice in writing, within four and twenty hours after such refusal to pay to the said person employed the amount of wages due, stating the reasons for such refusal in full, and that the said manufacturer or other party intends to have such work arbitrated. Recovery of
wages and
sums due for
work.

VIII. And be it enacted, that no order or conviction or proceeding touching the same respectively shall be quashed for want of form, or be removed by certiorari or otherwise into any of her Majesty's superior courts of record; and that when any distress shall have been made for levying any money by virtue of this Act the distress itself shall not be deemed unlawful, nor the party making the same a trespasser, on account of any defect or want of form in the summons, warrant, conviction, warrant of distress, or other proceedings in relation thereto, nor shall the party distraining be deemed a trespasser from the beginning on account of any irregularity afterwards committed by him, but the person aggrieved by such irregularity may recover full satisfaction for special damage (if any) by action on the case. No certiorari
to be allowed.

IX. And be it enacted, that this Act may be amended or repealed by any Act to be passed in the present session of Parliament.

Act may be
amended, &c.

ANNO VICESIMO SECUNDO VICTORIÆ REGINÆ.

CAP. XXXIV.

An Act to amend and explain an Act of the Sixth Year of the Reign of King George the Fourth, to repeal the Laws relating to the Combination of Workmen, and to make other Provisions in lieu thereof. [19th April, 1859].

6 Geo. IV. c. 129. WHEREAS an Act was passed in the sixth year of the reign of King George the Fourth, intituled "An Act to repeal the laws relating to the combination of workmen, and to make other provisions in lieu thereof:" and whereas different decisions have been given on the construction of the said Act: Be it therefore declared and enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Agreements in certain cases not to be deemed "molestation" or "obstruction" within the meaning of the recited Act.

I. That no workman or other person, whether actually in employment or not, shall, by reason merely of his entering into an agreement with any workman or workmen, or other person or persons, for the purpose of fixing or endeavouring to fix the rate of wages or remuneration at which they or any of them shall work, or by reason merely of his endeavouring peaceably, and in a reasonable manner, and without threat or intimidation, direct or indirect, to persuade others to cease or abstain from work in order to obtain the rate of wages or the altered hours of labour so fixed or agreed upon or to be agreed upon, shall be deemed or taken to be guilty of "molestation" or "obstruction," within the meaning of the said Act, and shall not therefore be subject or liable to any prosecution or indictment for conspiracy: Provided always, that nothing herein contained shall authorize any workman to break or depart from any contract or authorize any attempt to induce any workman to break or depart from any contract.

ANNO VICESIMO SEXTO ET VICESIMO SEPTIMO
VICTORIÆ REGINÆ.

CAP. XL.

An Act for the Regulation of Bakehouses. [July 13, 1863.]

WHEREAS it is expedient to limit the hours of labour of young persons employed in bakehouses, and to make regulations with respect to cleanliness and ventilation in bakehouses: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

I. This Act may be cited as "The Bakehouse Regulation Act, 1863."

Interpretation of terms.

II. For the purposes of this Act the words hereinafter mentioned shall be construed as follows; that is to say,

"Local authority" shall, as respects any place, mean the persons or bodies of persons defined to be the local authority in that place by the one hundred and thirty-fourth section of the Act passed in the session holden in the eighteenth and nineteenth years of the reign of her present Majesty, chapter one hundred and twenty, or by the Nuisances Removal Acts hereinafter mentioned; that is to say, as to England, by the Act passed in the session holden in the eighteenth and nineteenth years of the reign of her present

Majesty, chapter one hundred and twenty-one, as amended by the Act passed in the session holden in the twenty-third and twenty-fourth years of the reign of her present Majesty, chapter seventy-seven; as to Scotland, by the Act passed in the session holden in the nineteenth and twentieth years of the reign of her present Majesty, chapter one hundred and three; and as to Ireland, by the Acts passed, the one in the session holden in the eleventh and twelfth years of the reign of her present Majesty, chapter one hundred and twenty-three, and the other in the session holden in the twelfth and thirteenth years of the reign of her present Majesty, chapter one hundred and eleven:

- "Bakehouse" shall mean any place in which are baked bread, biscuits, or confectionery, from the baking or selling of which a profit is derived:
- "Employed," as applied to any person, shall include any person working in a bakehouse, whether he receives wages or not:
- "Occupier" shall include any person in possession:
- "The Court" shall include any justice or justices, sheriff or sheriff substitute, magistrate or magistrates, to whom jurisdiction is given by this Act.

III. No person under the age of eighteen years shall be employed in any bakehouse between the hours of nine of the clock at night and five of the clock in the morning.

Limitation of hours of labour of persons under 18 years of age.

If any person is employed in contravention of this section the occupier of the bakehouse in which he is employed shall incur the following penalties in respect of each person so employed; that is to say,

For the first offence, a sum not exceeding two pounds:

For a second offence, a sum not exceeding five pounds:

For a third and every subsequent offence, a sum not exceeding one pound for each day of the continuance of the employment in contravention of this Act, so that no greater penalty be imposed than ten pounds.

IV. The inside walls and ceiling or top of every bakehouse situate in any city, town, or place containing according to the last census a population of more than five thousand persons, and the passages and staircase leading thereto, shall either be painted with oil or be limewashed, or partly painted and partly limewashed: where painted with oil there shall be three coats of paint, and the painting shall be renewed once at least in every seven years, and shall be washed with hot water and soap once at least in every six months: where limewashed the limewashing shall be renewed once at least in every six months.

Regulations as to cleanliness of bakehouse.

Every bakehouse wherever situate shall be kept in a cleanly state, and shall be provided with proper means for effectual ventilation, and be free from effluvia arising from any drain, privy, or other nuisance.

If the occupier of any bakehouse fails to keep the same in conformity with this section he shall be deemed to be guilty of an offence against this Act, and to be subject in respect of such offence to a penalty not exceeding five pounds.

The court having jurisdiction under this Act may, in addition to or instead of inflicting any penalty in respect of an offence under this section, make an order directing that within a certain time to be named in such order certain means are to be adopted by the occupier for the purpose of bringing his bakehouse into conformity with this section; the court may upon application enlarge any time appointed for the adoption of the means directed by the order, but any non-compliance with the order of the court shall, after the expiration of the time as originally limited or enlarged by subsequent order, be deemed to be a continuing offence, and to be punishable by a penalty not exceeding one pound for every day that such non-compliance continues.

V. No place on the same level with a bakehouse situate in any city, town, or place containing according to the last census a population of more than five thousand persons, and forming part of the same building, shall be used as a sleeping place, unless it is constructed as follows: that is to say,

As to sleeping places near bakehouses.

Unless it is effectually separated from the bakehouse by a partition extending from the floor to the ceiling :

Unless there be an external glazed window of at least nine superficial feet in area, of which at the least four and a half superficial feet are made to open for ventilation :

And any person who lets, occupies, or continues to let, or knowingly suffers to be occupied, any place contrary to this Act, shall be liable for the first offence to a penalty not exceeding twenty shillings, and for every subsequent offence to a penalty not exceeding five pounds.

Power to local authority to enforce provisions of this Act.

VI. It shall be the duty of the local authority to enforce within their district the provisions of this Act, and in order to facilitate the enforcement thereof any officer of health, inspector of nuisances, or other officer appointed by the local authority, hereinbefore referred to as the inspector, may enter into any bakehouse at all times during the hours of baking, and may inspect the same, and examine whether it is or not in conformity with the provisions of this Act ; and any person refusing admission to the inspector, or obstructing him in his examination, shall for each offence incur a penalty not exceeding twenty pounds ; and it shall be lawful for any inspector who is refused admission to any bakehouse, in pursuance of this section, to apply to any justice for a warrant authorizing him, accompanied by a police constable, to enter into any such bakehouse for the purpose of examining the same, and to enter the same accordingly.

As to expenses of local authority acting under this Act.

VII. All expenses incurred by any local authority in pursuance of the provisions of this Act may be paid out of any rate leviable by them, and applicable to the payment of the expenses incurred by the local authority under the said Nuisances Removal Acts, and the said authority may levy such rate accordingly.

Penalties.

Recovery of penalties.

VIII. All penalties under this Act may be recovered summarily before two or more justices ; as to England, in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of her Majesty Queen Victoria, chapter forty-three, intituled " An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," or any Act amending the same ; as to Ireland, in manner directed by the Act passed in the session holden in the fourteenth and fifteenth years of the reign of her Majesty Queen Victoria, chapter ninety-three, intituled " An Act to consolidate and amend the Acts regulating the proceedings of Petty Sessions and the duties of justices of the peace out of Quarter Sessions in Ireland," or any Act amending the same ; and as to Scotland, upon summary conviction, with power for the justices having cognizance of the case to sentence the offender to imprisonment for a period not exceeding three months until the penalty and the expenses of conviction are paid.

Jurisdiction of certain magistrates.

IX. Any act, power, or jurisdiction hereby authorized to be done or exercised by two justices may be done or exercised by the following magistrates within their respective jurisdictions ; that is to say, as to England, by any metropolitan police magistrate or other stipendiary magistrate sitting alone at a police court or other appointed place, or by the lord mayor of the city of London, or any alderman of the said city sitting alone or with others at the Mansion House or Guildhall ; as to Ireland, by any one or more divisional magistrates of police in the police district of Dublin, and elsewhere by one or more justice or justices of the peace in Petty Sessions, and as to Scotland by the sheriff or sheriff-substitute, or by any police magistrate of a burgh.

ANNO TRICESIMO ET TRICESIMO PRIMO
VICTORIÆ REGINÆ.

CAP. CV.

An Act to establish Equitable Councils of Conciliation to adjust
Differences between Masters and Workmen.

[15th August, 1867.]

WHEREAS an Act was passed in the fifth year of the reign of King George the Fourth, intituled "An Act to consolidate and amend the laws relative to arbitration of disputes between masters and workmen;" and another Act was passed in the first year of the reign of her present Majesty Queen Victoria, chapter sixty-seven; and another Act was passed in the eighth and ninth years of the reign of her present Majesty, chapter seventy-seven; and another Act was passed in the eighth and ninth years of the reign of her present Majesty, chapter one hundred and twenty-eight, and the three last mentioned Acts were passed to amend the said first-recited Act: 5 Geo. IV. c. 96.

And whereas, in order the better to facilitate the settlement of disputes between masters and workmen, it is expedient, without repealing the said several Acts, that masters and workmen should be enabled, when licensed by her Majesty, to form equitable councils of conciliation or arbitration, and that the powers in the said Acts contained for enforcing awards made under or by virtue of the provisions thereof should be extended to the enforcing of awards to be made by and under the authority of such equitable councils of conciliation:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same as follows:

I. If any number of masters and workmen, in any particular trade or trades, occupation, or employment, being inhabitant householders or part occupiers of any house, warehouse, counting-house, or other property within any city, borough, town, stewardry, riding, division, barony, liberty, or other place, and who, being a master in such trade, shall have resided and carried on the same within any such place for six calendar months previous to the signing of such petition, and being a workman shall have resided for a like period within any such place, and shall have worked at his trade or calling for seven years previous to the signing of such petition, shall at a meeting specially convened for that purpose agree to form a council of conciliation and arbitration, and shall jointly petition her Majesty to grant them a license to form such council, to hold, have, and exercise all the powers granted to arbitrators and referees under the before-recited Acts, and in such petition for the same shall set forth the number of the council, and also the names, occupation, and residence of the petitioners, and the manner in which the expenses of the said council and of the registry hereinafter directed are to be provided for, it shall then be lawful for her Majesty or her Majesty's principal secretary of state for the Home Department, to grant such license, provided notice of such petition has been published one month before the application for such license in the *London Gazette*, and in one or more of the local newspapers of the place whence such petition emanates: Provided always, that it shall be lawful for any masters and workmen in any particular trade or trades, occupation, or employment as aforesaid, within the limits of the application of the Metropolitan Local Management Act, or within any two or more boroughs or districts of the metropolis, to associate themselves for the purposes of this Act, and with such license as aforesaid to form councils as aforesaid, as if they resided within any one borough or district.

Power to her Majesty or secretary of state to license councils of conciliation.

II. The said council shall consist of not less than two masters and two workmen, nor more than ten masters and ten workmen, and a chairman; the number to constitute the said council to be inserted in the license; but no member of the Councils to consist of not less than

2 nor more
than 10 mas-
ters and
workmen,
and a chair-
man.
Petitioners
for council
to elect first
council.

Powers, &c.,
of councils.

Quorum to
form coun-
cil.

Committee
of concilia-
tion to be
appointed by
council.

Chairman to
preside at
meetings of
council, and
to have cast-
ing vote.

No counsel,
&c., to attend
hearings
without
consent.

Council to
be elected
for one Year.
Case of va-
cancy, &c.

council shall adjudicate in any case in which he or any relation of his is plaintiff or defendant.

III. For the purposes of this Act, the persons whose names, occupations, and abodes are attached to the petition praying for a license shall and they are hereby authorized to proceed to the appointment of a council of conciliation and arbitration from among themselves within thirty days after such grant of license; and the said council shall remain in office until the appointment of a new council in its stead.

IV. The council shall have power to appoint their own chairman, clerk, or such other officer or officers as they may deem requisite, and shall have power to hear and determine all questions of dispute and difference between masters and workmen, as set forth in the before-recited Act of the fifth year of King George the Fourth, chapter ninety-six, which may be submitted to them by both parties, and shall have, hold, and exercise, all the powers and authority granted to arbitrators and referees by and under the various enactments and provisions of the Acts before recited; and any award the said equitable councils of conciliation and arbitration may make in any case of dispute or difference submitted to them under the before recited Act or Acts, or under this Act, shall be final and conclusive between the parties to such arbitration, without being subject to review or challenge by any court or authority whatsoever; and the said council are hereby further authorized to adjudicate upon and determine any other case of dispute or difference submitted to them by the mutual consent of master and workman or masters and workmen, and the same proceedings of distress, sale, and imprisonment as are provided by the said recited Acts or any of them shall be had towards enforcing every such award (by application to any justice of the peace of the county, stewardry, riding, division, barony, city, town, burgh, or place within which the parties shall reside) as are by the said recited Acts or any of them prescribed for enforcing awards made under or by virtue of the provisions of them or any of them, and any award in writing under the hand of the chairman of the council shall be deemed sufficient evidence of the validity of such award to authorize such proceedings of distress, sale, and imprisonment; but nothing in this Act contained shall authorize the said council to establish a rate of wages or price of labour or workmanship at which the workmen shall in future be paid.

V. A quorum of not less than three (one being a master and another a workman, and the third the chairman) may constitute a council for the hearing and adjudication of cases of dispute, and may accordingly make their award; but a committee of council, to be denominated the committee of conciliation, shall be appointed by the council, consisting of one master and one workman, who shall sit at such times as shall be appointed, and be renewed from time to time as occasion shall require; and all cases or questions of dispute which shall be submitted to the council by both parties shall in the first instance be referred to the said committee of conciliation, who shall endeavour to reconcile the parties in difference; when such reconciliation shall not be effected, the matter in dispute shall be remitted to the council, to be disposed of as a contested matter in the regular course.

VI. The chairman of the council, who shall be some person unconnected with trade, shall preside at their meetings, and shall be appointed at their first meeting after obtaining such license as aforesaid. When the votes of the council shall be equal, the chairman for the time being is to have the casting vote.

VII. No counsel, solicitors, or attorneys to be allowed to attend on any hearing before the council or the committee of conciliation unless consented to by both parties.

VIII. On the first Monday in November in the year next after the first appointment of the council, and on the first Monday in November in each succeeding year, a council and chairman shall be appointed, who shall remain in office until the appointment of a new council; and in case of vacancies arising betwixt the fixed days of election in each year, caused by the death or removal of any member of the council or of the chairman, an election shall take place

within fourteen days, and another member be elected to fill up the said vacancy from the class to which he may belong, or a chairman be appointed, as the case may be, and the member or chairman so elected shall serve the remainder of the year.

IX. For the purposes of this Act, each person being twenty-one years of age, belonging to the trade, having a license for a council, and being an inhabitant householder or part occupier of any house, warehouse, counting-house, or other property, who, being a master in such trade, has resided and carried on the same within the limits of any city, borough, town, stewartry, riding, division, barony, liberty, or other place, wherever an equitable council of conciliation and arbitration is formed, for the space of six calendar months previous to the ninth day of November in any one year, and being a workman has resided for a like period within the same limits, and has worked at his trade or calling seven years previous to the ninth day of November in any one year, shall be entitled to be registered as a voter for the election of the council, and shall be qualified to be elected a member of such council; but the masters shall appoint their own portion of the council, and the workmen elect their portion of the council.

Householders and part occupiers may demand to be registered, and have a vote for the council, and may be elected thereto.

X. The clerk of each division of the council shall keep a register of every person claiming to have his name inscribed on the register as a voter for the council, whether master or workman (but distinct from each other), the said register to contain the name, occupation, and abode of each person engaged in the particular trade or occupation as set forth in the license granting the formation of the council; and the said clerk shall, upon payment of a registration fee being made to him, register the same immediately, or be liable to be fined for neglect, the said fine to be applied to the funds of the said council, and the council is hereby empowered to fix and determine the amount of such fee and fine respectively: Provided that in case it shall appear to the council that any person ought not to be so registered, the council shall strike the name of such person off such register.

Register of voters to be kept.

XI. The clerk of the council shall, for the purposes of this Act, be the returning officer: he shall convene meetings of masters and meetings of workmen, by advertisement, fourteen clear days previous to the first day of November; and each class shall at such meetings proceed to nominate and elect members to the council for the year next ensuing; the votes to be taken by show of hands or division of numbers, and in such place as the council may authorize; and the clerk shall declare to the said meeting the names of the candidates who are elected, and the same shall be final and conclusive, unless a poll is demanded at the time the declaration is made; but either party may demand a poll of those only whose names are registered in the books of the council.

Meetings of masters and workmen to elect the council.

XII. A poll being demanded by six registered voters, the council shall appoint time and place for that purpose, where each voter shall be entitled to record his vote.

In case a poll is demanded, council to appoint time and place.

XIII. The clerk shall, within seven days after the day of nomination, in case of a poll being demanded, declare the number of votes given to each candidate, and those having received the largest number of votes shall be declared duly elected.

Election to be declared within 7 days of nomination. Appointment of clerk.

XIV. The council shall also appoint a clerk, who shall continue in office until a new appointment shall be made in his stead, and who shall keep a record of all their proceedings, and do and perform such other duties as this Act may authorize or the said council may require.

XV. The council may hold their sittings in any public room used for conducting public business, with the permission of the authority having the power to grant such permission.

Place of meeting.

XVI. Every council elected under this Act shall from time to time make out a list of fees which shall be charged for any proceeding and other expenses under this Act, and shall appoint such officers as may be necessary, and make such bye laws, rules, and regulations for their guidance, and for the taking and scrutiny of the votes given for the election of members of the council, and also for

To make list of fees, bye laws, &c.

5 Geo. IV. c.
98, &c., to re-
main in full
force.
Citation of
Act.
Commence-
ment of Act.

XVIII. In citing this Act for any purpose whatever it shall be sufficient to use the expression "The Councils of Conciliation Act, 1867."

XIX. This Act shall commence on the second day of July, one thousand eight hundred and sixty-seven.

Form of Summons of a Witness to be issued by the Chairman.

Whereas it appeareth to me A. B., chairman of the said Equitable Council of Conciliation and Arbitration held at _____, that G. H. of _____ in the borough [or county, *as the case may be*], is a material witness to be examined concerning the dispute between C. D. of _____ and E. F. of _____ under the Act [*here set forth the title of the Act*]: These therefore are to require you forthwith to summon the said G. H. to appear before the said Equitable Council of Conciliation and Arbitration, held at the _____ at the hour of _____ in the _____ noon of the _____ day of _____

Given under my hand, this day of in the year of
our Lord

(Signed) A. B.,
Chairman of the Equitable Council of
Conciliation and Arbitration.

We, I. K. and L. M. [name and describe the arbitrators], the arbitrators in the matters in dispute between [here state the names of plaintiff and defendant to the reference], do hereby adjudge and determine that [here set forth the determination, to which the chairman and arbitrators shall subscribe their names].

Signed this day of 18 .

We _____, members of the Equitable Council of Conciliation and Arbitration, do hereby agree to extend the time of hearing or making an award, as the case may be, in the matter in dispute between _____ of _____ and _____ of _____ to the _____ day of _____.

Witness our hands, this day of 18 .

I, _____, chairman of the _____ Equitable Council of Conciliation and Arbitration, do hereby acknowledge that the award in the matter of dispute _____

between of and of hath been duly
fulfilled by who is hereby discharged of the same.

Witness my hand, this day of

A. B., Chairman.

Form of Oath to be Administered by the Arbitrators to the Parties and

Witnesses under this Act.

The evidence that you shall give before this Equitable Council of Conciliation and Arbitration between and under and by virtue of this Act [*here state the title of this Act*], shall be the truth, the whole truth, and nothing but the truth.

So help you God.

Form of Commitment of a Person Summoned as a Witness before the Arbitrators.

Whereas proof on oath hath been made before me, one of her Majesty's justices of the peace for the county [*or riding, stewartry, division, city, burgh, liberty, town, or place*] of , on this day of , that A. B. hath been duly summoned, and hath neglected to appear and give evidence before the Equitable Council of Conciliation and Arbitration for the in the matters of dispute between C. D. and E. F., at in the county [*or riding, stewartry, division, city, burgh, liberty, town, or place*] of , on the day of , under and by virtue of an Act made in the twenty-fourth year of the reign of her present Majesty, intituled "An Act" [*here set forth the title of this Act*]; and the said A. B. being required to appear and give evidence before the said arbitrators, and still refusing so to do: Therefore I, the said justice, do hereby, in pursuance of the said Act, commit the said A.B. to the [*describing the prison and the house of correction*], there to remain without bail or mainprize, for his [*or her*] offence aforesaid, until he [*or she*] shall submit himself [*or herself*] to be examined and give his [*or her*] evidence before the said arbitrators touching the matters referred to them, or shall otherwise be discharged by due course of law: And you the [*constable or other peace officer or officers to whom the warrant is directed*] are hereby authorized and required to take into your custody the body of the said A.B., and him [*or her*] safely convey to the said prison [*or house of correction*], and him [*or her*] there to deliver to the gaoler [*or keeper*] thereof, who is hereby authorized and required to receive into his custody the body of the said A.B., and him [*or her*] safely to detain and keep, pursuant to this commitment.

Given under my hand, this day of in the
year of our Lord

(This commitment to be directed to the proper peace officer and the gaoler [*or keeper*] of the prison [*or house of correction*].)

Form of Warrant of Distress.

To the constable of

Whereas , of , under an award made by , on the day of , in the year of our Lord , pursuant to an Act passed in the twenty-fourth year of the reign of her present Majesty, intituled "An Act" [*state the title of this Act*], is liable to pay to , of , the sum of , and also the sum of ; and the said having refused or neglected to pay the same for the space of two days and upwards subsequent to the making of such award: These are therefore to command you to levy the said sum of by distress and sale of the goods and chattels of the said ; and I do hereby order and direct the goods and chattels so to be distrained to be sold and disposed of within

days, unless the sum of _____ for which such distress shall be made, together with the reasonable charges of taking and keeping such distress, shall be sooner paid; and you are hereby also commanded to certify to me what you shall do by virtue of this my warrant.

Given under my hand and seal at _____, the _____ day of _____.

Form of the Constable's Return to the Warrant of Distress.

I, _____, constable of _____, do hereby certify to _____, justice of the peace _____; that I have made diligent search for, but do not know of, nor can find any goods and chattels of _____, by distress and sale whereof I may levy the sum of _____, pursuant to his warrant for that purpose, dated the _____ day of _____ in the year of our Lord _____.

Given under my hand, this _____ day of _____, the year of our Lord _____.

Form of Commitment thereupon to the House of Correction.

Here name the } To the constable of _____, and also to the keeper of the
county. } house of correction at _____.

Whereas _____, of _____, under an award made by _____, on the _____ day of _____, in the year of our Lord _____, pursuant to an Act passed in the twenty-fourth year of the reign of her present Majesty, intituled "An Act" [state the title of this Act], became liable to pay to the sum of _____, and also the sum of _____ for costs, time, and expenses, making together the sum of _____, and having refused or neglected to pay the same for the space of two days and upwards subsequent to the making of such award, my warrant was, according to the provisions of the said Act, duly made and issued for the levying the said sum of _____ by distress and sale of the goods and chattels of the said _____: And whereas it appears by the return of _____, constable of _____, dated the _____ day of _____, that he hath made diligent search for, but doth not know of, nor can find any goods and chattels of the said _____, by distress and sale whereof the said sum of _____ may be levied, pursuant to my said warrant: These are therefore to command you, the said constable of _____, to apprehend the said _____, and convey him to the said house of correction at _____ aforesaid, and deliver him there to the keeper of the said house of correction; and these are also to command you, the keeper of the said house of correction, to receive him, the said _____, into the said house of correction, and there keep him, without bail or mainprize, for the space of _____ months, unless the said sum of _____ so ordered to be paid as aforesaid shall be sooner satisfied, with all reasonable expenses.

Given under my hand and seal at _____, the _____ day of _____.

Form of Commitment where the Warrant of Distress is withheld.

Here name the } To the constable of _____, and also to the keeper of
county. } the house of correction at _____.

Whereas _____, of _____, under an award made by _____, on the _____ day of _____, in the year of our Lord _____, pursuant to an Act passed in the twenty-fourth year of the reign of her present Majesty, intituled "An Act" [state the title of this Act], became liable to pay to the sum of _____, and also the sum of _____ for costs, time, and expenses, making together the sum of _____, which he has refused or neglected to pay for the space of two days and upwards subsequent to the making of such award: And whereas it appears to me that the recovery of such sum and warrant of distress and sale of the goods and chattels of the said _____ will be attended with consequences ruinous, or in an

especial manner injurious, to the defaulter [and his family, *if any*], and I therefore have determined to withhold such warrant, and to commit the said to prison, pursuant to the said Act: These are therefore to command you, the said constable of , to apprehend the said , and convey him to the house of correction at aforesaid, and to deliver him there to the keeper of the said house of correction; and these are also to command you, the keeper of the said house of correction, to receive him, the said , into the said house of correction, and there keep him, without bail or mainprize, for the space of months, unless the said sum of so ordered to be paid as aforesaid shall be sooner satisfied, with all reasonable expenses.

Given under my hand and seal at , the day of .

ANNO TRICESIMO ET TRICESIMO PRIMO
VICTORIÆ REGINÆ.

CAP. CXLI.

An Act to amend the Statute Law as between Master and
Servant. [20th August, 1867.]

WHEREAS it is expedient to alter in some respects the existing enactments relative to the determination of questions arising between employers and employed under contracts of service.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

I. This Act may be cited for all purposes as "The Master and Servant Act, 1867." Short title.

II In this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be anything in the subject or context repugnant to such construction: Definition of terms.

The word "Employer" shall include any person, firm, corporation, or company who has entered into a contract of service with any servant, workman, artificer, labourer, apprentice, or other person, and the steward, agent, bailiff, foreman, manager, or factor of such person, firm, corporation, or company:

The word "Employed" shall include any servant, workman, artificer, labourer, apprentice, or other person, whether under the age of twenty-one years or above that age, who has entered into a contract of service with any employer:

The words "Contract of Service" shall include any contract, whether in writing or by parole, to serve for any period of time, or to execute any work, and any indenture or contract of apprenticeship, whether such contract or indenture has been or is made or executed before or after the passing of this Act:

The word "Parties" shall include the employer and employed under any contract of service:

The word "Writing" shall include "Printing."

The word "Property" shall include all real and personal estate and effects used and employed under or affected by any contract of service or operations under the same:

The word "Sheriff" applies to Scotland only, and shall include sheriff-substitute:

The words "County or Place" shall include county, riding, division, liberty, city, borough, or place:

The word "Magistrate" does not apply to Scotland, and means in England, except in the city of London, a stipendiary magistrate, and in the city of London means the lord mayor or an alderman sitting at the Mansion House or at the Guildhall, and in Ireland shall apply only to the metropolitan police district of Dublin, and there shall mean one of the divisional magistrates for such district:

The word "Justice" means justice of the peace:

The words "Two Justices" mean two or more justices assembled and acting together:

The words "Justice," "Two Justices," "Magistrate," and "Sheriff," respectively mean a justice, two justices, a magistrate, and a sheriff having jurisdiction in the county or place where any contract of service is according to the terms thereof to be executed, or where the party against whom any information, complaint, or proceeding is to be laid or taken under this Act happens to be.

Limitation of scope of this Act, and substitution thereof for existing enactments.

III. Nothing in this Act shall apply to any contract of service other than a contract within the meaning of the enactments described in the first schedule to this Act, or some or one of them, or to any employer or employed other than the parties to a contract of service to which this Act applies as aforesaid, or to any case, matter, or thing arising under or relating to any contract of service, or arising between employer and employed, other than cases, matters, and things to which the said enactments respectively apply; and in respect of all contracts of service, employers, employed, cases, matters, and things to which this Act applies, the respective provisions of this Act shall be deemed to be and are hereby substituted for such of the said enactments, or so much or such parts of the same, as would have applied thereto if this Act had not been passed; but any proceedings at the passing of this Act pending under the same enactments, or any of them, may be continued and prosecuted as if this Act had not been passed.

Complaint to be made before a justice or magistrate in England, Wales, and Ireland, and before a justice or sheriff in Scotland.

Upon complaint made, summons or citation to be issued.

IV. Wherever the employer or employed shall neglect or refuse to fulfil any contract of service, or the employed shall neglect or refuse to enter or commence his service according to the contract, or shall absent himself from his service, or wherever any question, difference, or dispute shall arise as to the rights or liabilities of either of the parties, or touching any misusage, misdemeanor, misconduct, ill-treatment, or injury to the person or property of either of the parties under any contract of service, the party feeling aggrieved may lay an information or complaint in writing before a justice, magistrate, or sheriff, setting forth the grounds of complaint, and the amount of compensation, damage, or other remedy claimed for the breach or nonperformance of such contract, or for any such misusage, misdemeanor, misconduct, ill-treatment, or injury to the person or property of the party so complaining; and upon such information or complaint being laid, the justice, magistrate, or sheriff shall issue or cause to be issued a summons or citation to the party so complained against, setting out the grounds of complaint, and the amount claimed for compensation, damage, or other remedy, as set forth in the said information or complaint, and requiring such party to appear, at the time and place therein appointed, before two justices or before a magistrate, or before the sheriff, to answer the matter of the information or complaint, so that the same may be then and there heard and determined.

Time for appearance.

V. The time to be appointed in the summons or citation for the appearance of the party complained against shall not be less than two or more than eight days from the date of the summons or citation, save that where the appearance is to be before justices in Petty Sessions, or before a magistrate in a police court, the time to be appointed shall be that of the sitting of the court of Petty Sessions or

police court at or for the place where the summons or citation is returnable, to be held next after such two days (whether within such eight days or not).

VI. Every such summons or citation shall be served on the party complained against by being delivered to him or left at his usual place of abode or business not less than two days before the time appointed for his appearance. Mode and time of service.

VII. Wherever the party complained against shall neglect or refuse to appear to any summons or citation as aforesaid according to the provisions of this Act, a justice, magistrate, or sheriff may, after due proof on oath of the service of such summons or citation, issue a warrant for the apprehension of such party in order to the hearing and determining of the matter of the information or complaint. On neglect or refusal to obey summons or citation warrant to issue.

VIII. If at any time after the laying of the information or complaint it appears to a justice, magistrate, or sheriff that the party complained against is about to abscond, the justice, magistrate, or sheriff may issue a summons or citation requiring the party complained against to appear before a justice, magistrate, or sheriff at a time and place therein appointed (such time being not later than twenty-four hours, exclusive of Sunday, from the date of the last-mentioned summons or citation), and to find good and sufficient security by recognizance or bond, with or without sureties, to the satisfaction of a justice, magistrate, or sheriff, for his appearance to answer the information or complaint; and if the party complained against fails to appear at the time and place so appointed, a justice, magistrate, or sheriff may issue a warrant for his apprehension; and if such party on appearing to the last-mentioned summons or citation, or on being so apprehended, fails so to find security, a justice, magistrate, or sheriff may order him to be detained in safe custody until the hearing of the information or complaint; but on his so finding security he shall be set at liberty. In case of intention to abscond, security to be found for appearance.

IX. Upon the hearing of any information or complaint under the provisions of this Act two justices, or the magistrate or sheriff, after due examination, and upon the proof and establishment of the matter of such information or complaint, by an order in writing under their respective hands, in their or his discretion, as the justice of the case requires, either shall make an abatement of the whole or part of any wages then already due to the employed, or else shall direct the fulfilment of the contract of service, with a direction to the party complained against to find forthwith good and sufficient security, by recognizance or bond, with or without sureties, to the satisfaction of a justice, magistrate, or sheriff, for the fulfilment of such contract, or else shall annul the contract, discharging the parties from the same, and apportioning the amount of wages due up to the completed period of such contract, or else where no amount of compensation or damage can be assessed, or where pecuniary compensation will not in the opinion of the justices, magistrate, or sheriff meet the circumstances of the case, shall impose a fine upon the party complained against, not exceeding in amount the sum of twenty pounds, or else shall assess and determine the amount of compensation or damage, together with the costs, to be made to the party complaining, inclusive of the amount of any wages abated, and direct the same to be paid accordingly; and if the order shall direct the fulfilment of the contract, and direct the party complained against to find good and sufficient security as aforesaid, and the party complained against neglect or refuse to comply with such order, a justice, magistrate, or sheriff may, if he shall think fit, by warrant under his hand, commit such party to the common gaol or house of correction within his jurisdiction, there to be confined and kept until he shall so find security, but nevertheless so that the term of imprisonment, whether under one or several successive committals, shall not exceed in the whole the period of three months; Provided always, that the two justices, magistrate, or sheriff may, if they or he think fit, assess and determine the amount of compensation or damage to be paid to the party complaining, and direct the same to be paid, whether the contract is ordered by them or him to be annulled or not, or, in addition to the annulling of the contract of service and discharge of the parties from the same, may, if they or he think fit, impose the fine as hereinbefore authorized, but Compensation may be awarded under order of two justices, &c., for nonperformance of contract of service, or other order may be made.

Enforcement of recognizance or bond for fulfilment of contract.

they or he shall not under the powers of this Act be authorized to annul, nor shall any provisions of this Act have the effect of annulling, any indenture or contract of apprenticeship that they or he might not have annulled or that would not have been annulled if this Act had not been passed.

X. Where it is alleged by any party to a contract of service that the condition of a recognizance or bond entered into or given for the fulfilment of the contract under the provisions of this Act has not been performed, two justices, or a magistrate or sheriff, being satisfied thereof, after hearing the parties and the sureties (if any), or in the absence of any party or surety not appearing after summons or citation in that behalf, may order that the recognizance or bond be enforced for the whole or part of the sum thereby secured, as to the justices, magistrate, or sheriff seems fit; and the sum for which the same is so ordered to be enforced shall be recoverable accordingly in a summary manner under the Acts described in the second schedule to this Act.

Recovery of money by distress or poinding, and imprisonment in default.

XI. Where on the hearing of an information or complaint under this Act an order is made for the payment of money, and the same is not paid as directed, the same shall be recovered by distress or poinding of the goods and chattels of the party failing to pay, and in default thereof by imprisonment of such party, according and subject to the Acts described in the second schedule to this Act; but no such imprisonment shall be for more than three months, or be with hard labour.

Imprisonment to be in discharge of compensation.

XII. From and after the expiration of the term of any such imprisonment as aforesaid, the amount of fine, compensation, or damages, together with the costs, so assessed and directed to be paid by any such order as aforesaid, shall be deemed and considered as liquidated and discharged, and such order shall be annulled accordingly, and the said parties exonerated from their respective obligations under the same; provided always, that no wages or any portion thereof which may be accruing due to the employed under any contract of service after the date of such order shall be assessed to the amount of compensation or damages and costs directed to be paid by him under any such order or warrant of distress or poinding, or be seizable or arrestable under the same.

Wages exempt from order, distraint, poinding, or arrestment.

Application of fines and money recovered.

XIII. Where justices, or a magistrate or sheriff, impose any fine or enforce any sum secured by a recognizance or bond under this Act, they or he may, if they or he think fit, direct that a part, not exceeding one-half, of such fine or sum, when recovered, be applied to compensate an employer or employed for any wrong or damage sustained by him by reason of the Act or thing in respect of which the fine was imposed, or by reason of the nonfulfilment of the contract of service.

Punishment for aggravated misconduct, &c.

XIV. Where on the hearing of an information or complaint under this Act it appears to the justices, magistrate, or sheriff, that any injury inflicted on the person or property of the party complaining, or the misconduct, misdemeanor, or ill-treatment complained of, has been of an aggravated character, and that such injury, misconduct, misdemeanor, or ill-treatment has not arisen or been committed in the *bonâ fide* exercise of a legal right existing, or *bonâ fide* and reasonably supposed to exist, and further, that any pecuniary compensation or other remedy by this Act provided will not meet the circumstances of the case, then the justices, magistrate, or sheriff may, by warrant, commit the party complained against to the common gaol or house of correction within their or his jurisdiction, there to be (in the discretion of the justices, magistrate, or sheriff) imprisoned, with or without hard labour, for any term not exceeding three months.

Party convicted may appeal to the next General Quarter Sessions of the peace.

XV. Any party convicted by two justices or the magistrate under the provisions of the last preceding section may appeal against the conviction upon finding good and sufficient security, by recognizance or bond, with or without sureties, to the satisfaction of a justice or magistrate, to prosecute the said appeal at the next General Court of Quarter Sessions of the peace to be holden in and for the county or place wherein such conviction shall have been made, and to abide the result of the said appeal according to the usual procedure of such court, and to pay such costs as that court may direct, which costs that court is hereby empowered to award.

XVI. Upon the hearing and determining of any information or complaint between employer and employed, and on any appeal, under the provisions of this Act, the respective parties to the contract of service, their husbands or wives, shall be deemed and considered as competent witnesses for all the purposes of this Act.

Parties to the contract of service to be competent witnesses.

XVII. No wages shall become payable to or recoverable by any party for or during the term of his imprisonment under any warrant of committal under this Act.

Wages not to be payable during imprisonment.

XVIII. Nothing in this Act shall prevent employer or employed from enforcing their respective civil rights and remedies for any breach or nonperformance of the contract of service by any action or suit in the ordinary courts of law or equity in any case where proceedings are not instituted under this Act; nor shall anything in this Act affect the provisions of the Act of the fifth year of King George the Fourth (chapter ninety-six), "to consolidate and amend the laws relative to the arbitration of disputes between masters and workmen," or of any Act extending or amending the same.

Nothing to prevent proceedings by civil action or suit. Geo. IV. c. 96.

XIX. Nothing in this Act shall interfere with the usual and accustomed mode of procedure in any court of criminal judicature for the trial of indictable offences relating to wilful and malicious injuries to persons or property committed by masters, workmen, servants, or others, either at common law or under the several statutes made and now in force for the punishment of such offences, but so that no person be twice prosecuted for the same offence.

Saving or indictment, &c.

XX. The several forms in the third schedule to this Act contained, or forms to the like effect, shall be deemed valid and sufficient in law, and no objection shall be taken or allowed for any alleged defect therein, either in substance or in form, and in Scotland any complaint under the provisions of this Act, if brought before the sheriff, may be in the form of a summary petition, and followed by the usual forms of procedure applicable to summary petitions in the Sheriff Court; and the forms set forth in the third schedule (Part 2.—*Scotland*) to this Act annexed, or forms to the like effect, may be used, and shall be sufficient for the purposes thereof.

No objection to be taken for defect in forms.

XXI. The enactments described in the second schedule to this Act, and all enactments extending or amending the same, shall apply and be put in force to and in respect of proceedings under this Act, except as far as any provision of this Act is inconsistent therewith.

Application of Summary Procedure Acts.

XXII. Except as in this Act expressly otherwise provided, every order or determination of a justice, justices, a magistrate, or a sheriff, shall be final and conclusive, notwithstanding anything in any of the enactments described in the first schedule to this Act.

Orders under Act final.

XXIII. No writ of certiorari or other process shall issue to remove any proceedings under this Act into any superior court.

Restriction on certiorari.

XXIV. Nothing in this Act shall take away or abridge any local or special jurisdiction touching apprentices.

Saving for special jurisdictions.

XXV. Nothing in this Act shall extend or make applicable to or in Ireland, or to or in any part of Great Britain, any of the enactments described in the first schedule to this Act not in force there independently of this Act.

Provision as to Ireland, &c. Duration of Act.

XXVI. This Act shall continue in force until the expiration of one year after the passing thereof, and to the end of the then next session of Parliament, and no longer.

SCHEDULES.

THE FIRST SCHEDULE.

Enactments referred to.

7 Geo. I. stat. 1, c. 13, ss. 4, 6.—An Act for regulating the journeymen taylors within the weekly bills of mortality.

9 Geo. I. c. 27, s. 4.—An Act for preventing journeymen shoemakers selling, exchanging, or pawning boots, shoes, slippers, cut leather, or other

materials for making boots, shoes, or slippers, and for better regulating the said journeymen.

- 13 Geo. II. c. 8, ss. 7, 8.—An Act to explain and amend an Act made in the first year of the reign of her late Majesty Queen Anne, intituled "An Act for the more effectual preventing the abuses and frauds of persons employed in the working up the woollen, linen, fustian, cotton, and iron manufactures of this kingdom;" and for extending the said Act to the manufactures of leather.
- 20 Geo. II. c. 19.—An Act for the better adjusting and more easy recovery of the wages of certain servants; and for the better regulation of such servants and of certain apprentices.
- 27 Geo. II. c. 6.—An Act to repeal a proviso in an Act made in the twentieth year of his present Majesty's reign, intituled "An Act for the better adjusting and more easy recovery of the wages of certain servants, and for the better regulation of such servants and of certain apprentices," which provides that the said Act shall not extend to the Stannaries in Devon and Cornwall.
- 31 Geo. II. c. 11, s. 3.—An Act to amend an Act made in the third year of the reign of King William and Queen Mary, intituled "An Act for the better explanation and supplying the defects of the former laws for the settlement of the poor, so far as the same relates to apprentices gaining a settlement by indenture;" and also to impower justices of the peace to determine differences between masters and mistresses and their servants in husbandry, touching their wages, though such servants are hired for less time than a year.
- 6 Geo. III. c. 25.—An Act for better regulating apprentices, and persons working under contract.
- 17 Geo. III. c. 56, ss. 8, 19.—An Act for amending and rendering more effectual the several laws now in being, for the more effectual preventing frauds and abuses by persons employed in the manufacture of hats, and in the woollen, linen, fustian, cotton, iron, leather, fur, hemp, flax, mohair, and silk manufactures; and also for making provisions to prevent frauds by journeymen dyers.
- 33 Geo. III. c. 55, ss. 1, 2.—An Act to authorize justices of the peace to impose fines upon constables, overseers, and other peace or parish officers, for neglect of duty, and on masters of apprentices for ill-usage of such their apprentices; and also to make provision for the execution of warrants of distress granted by magistrates.
- 39 & 40 Geo. III. c. 77, s. 3.—An Act for the security of collieries and mines, and for the better regulation of colliers and miners.
- 59 Geo. III. c. 92, ss. 5, 6.—An Act to enable justices of the peace in Ireland to act as such, in certain cases, out of the limits of the counties in which they actually are; to make provision for the execution of warrants of distress granted by them; and to authorize them to impose fines upon constables and other officers for neglect of duty, and on masters for ill-usage of their apprentices.
- 4 Geo. IV. c. 29.—An Act to increase the power of magistrates in cases of apprenticeships.
- 4 Geo. IV. c. 34.—An Act to enlarge the powers of justices in determining complaints between masters and servants, and between masters, apprentices, artificers, and others.
- 10 Geo. IV. c. 52.—An Act to extend the powers of an Act of the fourth year of his present Majesty, for enlarging the powers of justices in determining complaints between masters and servants to persons engaged in the manufacture of silk.
- 5 & 6 Vict. c. 7.—An Act to explain the Acts for the better regulation of certain apprentices.
- 6 & 7 Vict. c. 40, s. 7.—An Act to amend the laws for the prevention of

frauds and abuses by persons employed in the woollen, worsted, linen, cotton, flax, mohair, and silk hosiery manufactures; and for the further securing the property of the manufacturers and the wages of the workmen engaged therein.

14 & 15 Vict. c. 92, s. 16.—The Summary Jurisdiction (Ireland) Act, 1851.

THE SECOND SCHEDULE.

Summary Procedure Acts applied.

ENGLAND.

11 & 12 Vict. c. 43.—An Act to facilitate the performance of the duties of justices of the peace 'out of Sessions, within England and Wales, with respect to summary convictions and orders.

28 & 29 Vict. c. 127.—The Small Penalties Act, 1865.

SCOTLAND.

27 & 28 Vict. c. 53.—The Summary Procedure Act, 1864.

IRELAND.

14 & 15 Vict. c. 93.—The Petty Sessions (Ireland) Act, 1851.

THE THIRD SCHEDULE.

Forms.

PART 1.—ENGLAND AND IRELAND.

(A.)

Information and Complaint.

To wit. } The information and complaint of A. B. of [describe place of
[abode and trade] this day made before me [or us, one or more justices
or a magistrate] in and for the said [county or place] against C. D. of [describe
place of abode and trade], for that [here state the matter of the complaint, and the
amount claimed for damages, or other remedy, as in one of the forms of statements
of grounds of complaint below]. (Signed) A. B.

Exhibited to and before me, the day of , 186 , at J. S.

(B.)

Statements of the Matters or Grounds of Complaint for Insertion in the ordinary General Forms in use by Justices.

(a.) *Neglecting to fulfil Contract.*—That A. B., of (hereafter called the said employed), being the servant [or workman, or artificer, or labourer, or apprentice] of the said C. D., of (hereafter called the said employer), in his trade or business of a , under a certain contract of service [or apprenticeship] for a period now unexpired [or to execute certain work, namely,],* did, on the day of , at , in the said county, unlawfully neglect [or refuse], and has ever since neglected [or refused] to fulfil the said contract [or to enter into or commence his service according to the said contract, or apprenticeship, or has absented himself from the service of the said employer without just cause or lawful excuse]. [Conclude as in statement (e.) below.]

(b.) *Dispute as to Rights.*—Proceed to the asterisk * in (a.), and then: and that a certain question, difference, and dispute has arisen between them as to the right [or liability] of the said employed [or employer] under the said contract, namely [stating it], which the said employed [or employer] claims should, &c. [as the fact is]. [Conclusion as (e.) below.]

(c.) *Disputes as to Misusage, Misdemeanor, Misconduct, or Ill-treatment of either Party.*—Proceed to the asterisk * in (a.), and then: and that a certain

question, difference, and dispute has arisen between them touching certain ill usage which the said employed [or employer] committed [or inflicted] upon the said employer [or employed]; [or touching a certain misdemeanor which the said employer committed], [or touching certain misconduct which the said employed was guilty of], [or touching certain ill treatment which the said employer or employer inflicted upon the said employer or employed], on the day of , at , in the said county, namely, that he, the said [setting it out shortly.] [Conclusion as (e.) below.]

(d.) *Dispute as to Injury to Person or Property of either Party.*—Proceed to the asterisk * in (a.), and then: and that a certain question, difference, and dispute has arisen between them touching a certain injury which the said employed [or employer] inflicted to the person of the said employer [or employed], [or to , the property of the said employer or employed], on the day of , at the parish of , in the said county. [Conclusion as in (e.) below.]

(e.) *Conclusion to either of the Forms (a.), (b.), (c.), and (d.)*—And the said complainant, the employer [or employed] further says that the amount of compensation [or damage] which he claims for the said breach and nonperformance of the said contract [or for the said misuse, or misdemeanor, or misconduct, or ill treatment, or injury, as the case may be], is £ , and he prays that the said employed [or employer] may be summoned and adjudicated upon under section of the Master and Servant Act, 1867.

(C.)

Forms of Adjudication upon Complaints, for Insertion in the ordinary General Forms of Conviction in England, and Orders in Ireland.

Do adjudge and order, in pursuance of the Master and Servant Act, 1867, that—

(a.) *Abatement of Wages.*—The sum of , being the whole [or a part] of the wages now due to the said employed, shall be abated therefrom. [Costs as (f.) below.]

(b.) *Order for fulfilment of Contract.*—The said employed [or employer] shall fulfil the said contract forthwith [and, if so, that the said employed, or employer, shall forthwith find good and sufficient security by recognizance, himself in the sum of £ , and two sureties in the sum of £ each, or one surety in the sum of £ , for the due fulfilment of the said contract. [Costs as (f.) below.]

(c.) *Where Contract annulled, Wages apportioned and Fine imposed.*—The said contract shall be annulled, and the said parties thereto be forthwith discharged from the same. and we do apportion the wages of to be due to the said employed, to the completed period of the said contract. [Costs as (f.) below.]

(d.) *Where Fine imposed instead of Compensation.*—That the said employer [or employed] shall forfeit and pay the fine or sum of £ . [Costs as (f.) below.]

(e.) *Where Compensation, &c., assessed.*—Do assess, determine, and direct that the sum of £ shall be paid by the said employed [or employer] to the said employer [or employed] as and for compensation [or damages] to him for the breach and nonperformance of the said contract [or, as the case may be.] [Costs as (f.) below.]

(f.) *Costs in all Cases.*—And that the said employed [or employer] shall pay to the said employer [or employed] the sum of £ for his costs incurred in this behalf.

(D.)

(a.) *Statement of Complaint for Nonperformance of Condition of Recognizance given as Security for Fulfilment of Contract.*—Proceed as in the Form (A.) and to the asterisk * in the Statement (a.), and then: and the said employer [or employed] having neglected and refused to fulfil the said contract was duly summoned

before E. F., &c. [*describe the magistrate*] on the day of and by him was, in pursuance of section of The Master and Servant Act, 1867, ordered and directed to find security for the fulfilment of the said contract, and in obedience thereto the said employer [*or employed*] duly entered into his own recognizance in the sum of £ and E. F. and F. G. as his sureties entered into a recognizance in the sum of £ each, conditioned that the said employer [*or employed*] should forthwith fulfil the said contract; but the said employed [*or employer*] has not performed the said condition, or in any way fulfilled the said contract.

(b.) *Adjudication upon the last Complaint for Insertion in the usual General Form of Orders in use in England and Ireland.*—*After reciting in the past tense the statement of complaint (a.)*: Do adjudge and order, in pursuance of section of the said Act, that the said recognizances be estreated and that the said employed [*or employer*] shall forthwith pay the sum of £ and the said E. F. and F. G. the sum of £ each, and further each of them the sum of £ for the costs of the said employer [*or employed*] in this behalf, such sums to be respectively applied according to law.

(E.)

Forms of Adjudication in aggravated Cases for Insertion in the ordinary General Forms of Conviction in England and Orders in Ireland.

After reciting the conviction on one of the complaints in Form (A.) applicable, say, And it appearing to us [or me] that the said injury so inflicted on the person [or property] of the said employed [or employer, or the said misconduct, or misdemeanour, or ill-treatment complained of] was of an aggravated character, and did, not arise [or was not committed in the bonâ fide exercise of any legal right existing, or bonâ fide and reasonably supposed to exist, and further that any pecuniary compensation or other remedy provided by The Master and Servant Act, 1867, will not meet the circumstances of the case, do hereby, in pursuance of section of that Act, adjudge the said employed [or employer] for his said offence to be imprisoned in the house of correction at in the said county [and there to be kept to hard labour] for the space of

PART 2.—SCOTLAND.

Forms of Procedure before the Sheriff in Scotland.

1.

COMPLAINT.

Under the Master and Servant Act, 1867.

Unto the Sheriff.

A. B. [*describe place of abode and trade*]
against

C. D. [*describe place of abode and trade*].

The complainer humbly sheweth—

That the said C. D. [*here state the matter of the complaint, and the amount claimed for damages, as in forms of statements in Part 1. (B.)*].

May it therefore please your lordship to grant warrant to cite the said C. D., respondent, to appear before you to answer to this complaint, and thereafter to proceed in the matter in terms of the said Act.

According to Justice,

A. B. *Signature of complainer.*]

2.

WARRANT FOR CITATION OF RESPONDENT.

The sheriff grants warrant to officers of court to serve a copy of the foregoing complaint and of this deliverance upon C. D., respondent, and to cite him to appear personally to answer thereto at [*court house or place*] upon the day of at noon, with certification, and also to cite witnesses and havers for both parties for all diets in the cause.

[*Signature of sheriff.*]

3.

FORM OF CITATION.

To C. D. [*designation.*]

Take notice that you are cited to appear personally at the time and place specified in the warrant of citation to answer the complaint attached, in respect of which said warrant is issued with certification.

This I do on the day of
[*Signature of officer.*]

4.

FORM OF EXECUTION OF COMPLAINT.

This complaint served by me, sheriff officer, upon C. D., respondent [*state whether personally, or otherwise*], in presence of [*state name and designation of witness*], this day of eighteen hundred and years.

E. F., *sheriff officer.*

L. M., *Witness.*

REPORT OF CASE,

WEIR OR WILSON *v.* MERRY AND CUNINGHAME, IRONMASTERS,
GLASGOW, IN HOUSE OF LORDS.

This case was referred to at page 248, as having decided in the Court of Session the principle that an employer was not responsible for injuries sustained by a servant through the acts or omissions of a fellow servant. This decision has been affirmed in the House of Lords, by a judgment pronounced upon the 29th of May, 1868, which now settles the law upon this much-contested point, upon which legal opinion was a good deal divided.

As the case is of such general importance, we give the report of the Law Lords in delivering judgment.

LORD CHANCELLOR—My lords, the respondents in this case are coal and iron masters, owning the Haughhead Coal Pit, near Hamilton, in the county of Lanark. This pit had, prior to the 21st November, 1863, been sunk to the depth of ninety-five fathoms, and contained four seams of coal. The upper seam, called the Ell coal, had been worked out, and the respondents determined to work the next underlying seam, called the Pyotshaw coal. In order to open this seam from the side of the pit, a scaffold was erected in the pit, from and by means of which to drive the level in the Pyotshaw seam. This scaffold was completed on Saturday the 21st of November, 1863. On the following Monday, the 23rd of November, 1863, Robert Wilson and Henry Wilson, sons of the appellant, were engaged by the respondents to assist in driving this level; and on the 24th of November they went to work. The system of ventilation in the pit, before the scaffold was placed there, was of the usual kind, by downcast and upcast; and it is not suggested that before the platform was erected the system of ventilation was defective in any particular. The platform, however, interrupted the free current or circulation of air in the pit; and although it is stated that apertures were left in the platform on the upcast side for the return of the air from the shaft below, yet an accumulation of fire-damp appears to have taken place underneath the platform, and on the 25th of November, 1863, while Henry Wilson was searching on the scaffold with a light for a wedge which was missing, the light came in contact with the fire-damp coming from beneath the scaffold, and an explosion took place, by which the scaffold was blown up, and Henry Wilson killed on the spot. The present action was raised by the appellant, as the mother of Henry Wilson, for damages in consequence of his

death, and an issue was appointed by the Lord Ordinary for the trial of the cause in the following terms:—"Whether, on or about the 25th day of November, 1863, the deceased Henry Wilson, miner, Haughhead, the son of the pursuer, while engaged in the employment of defenders as a miner in said pit, was killed by an explosion of fire-damp through the fault of the defenders, to the loss, injury, and damage of the pursuer?" It was not suggested that the respondents themselves took any part in the erection of the platform, nor was any personal fault or negligence of any kind imputed to them. The general manager of their works in Lanarkshire was Mr. Jack. The manager of the Haughhead Coal Pit underneath Jack was John Neish; and subordinate to Neish was a man named Bryce, who attended to the underground operations. One Neil Robson, formerly a mining engineer, was a partner with the respondents, and it was under the general direction of the respondents, and of Robson and Jack, that the working of the Pyotshaw seam was commenced. The charge of sinking the pit, and making arrangements underground for working it, was given to Neish. It was proved at the trial, and indeed not controverted, that Jack and Neish were competent persons for the work on which they were engaged; selected by the respondents with due care, and furnished by the respondents with all necessary materials and resources for working in the best manner. The cause was tried on the 2nd of January, 1867, and the three following days, and a verdict found for the appellant, assessing damages at £100. Two exceptions were taken to the judge's directions to the jury; the second of which was allowed by the Court of Session, and a new trial granted. It is on this exception alone that your lordships are now called to express an opinion; the appellant having appealed against the interlocutor of the Court of Session allowing the exception. The exception runs thus: The presiding judge, after explaining that in law the defenders were not answerable for the consequences of an accident which could not have been foreseen, and by reasonable care and caution prevented, or for the consequences of an accident caused by the deceased's own fault, or the fault of a fellow-workman, as Bryce must be held to have been in the present instance, engaged with him in the same common employment; and after also explaining the nature of the obligation under which employers lay of providing all apparatus and machinery necessary and proper for the safety of their workmen, proceeded to bring under their consideration the circumstances relating to the ventilation arrangement or system of the pit in question, distinguishing betwixt the keeping clear and in good working order the ventilation arrangement or system when completed, and after the deceased came to be engaged in the pit, any defect or fault in said arrangement or system itself. And in reference to the latter, in the course of his charge, the Lord Ordinary directed the jury that "If they were satisfied on the evidence that the arrangement or system of ventilation in the Haughhead Pit at the time of the accident in question had been designed and completed by Neish before the deceased Henry Wilson was engaged to work in the pit, and that the defenders had delegated to Neish their whole power, authority, and duty, in regard to that matter, and also in regard generally to all the underground operations without control or interference on their part, the deceased Henry Wilson and Neish did not stand in the relation of fellow-workmen engaged in the same common employment, and the defenders were not on that ground relieved from liability to the pursuer for the consequences of fault, if any there was, on the part of Neish in designing and completing said arrangement or system of ventilation." The law applicable to cases of this kind has, of late years, come frequently under consideration, both in this house and in various courts of law in England and Scotland. The cases up to the year 1858 are all reviewed in the case of the Bartonshill Coal Company v. Reid, decided by your Lordships, and reported in 3 "Macqueen's Scotch Appeals," p. 266. In that case my noble and learned friend Lord Cranworth explained with great clearness the difference between the liability of a master to one of the general public, and his liability to a servant of his own for an injury occasioned not by the personal

neglect of the master himself, but by the negligence of some person employed by him. As to the liability of the master to the general public, my noble and learned friend expressed himself thus—"Where an injury is occasioned to any one by the negligence of another, if the person injured seeks to charge with its consequences any person other than him who actually caused the damage, it lies on the person injured to show that the circumstances were such as to make some other person responsible. In general, it is sufficient for this purpose to show that the person whose neglect caused the injury was, at the time when it was occasioned, acting not on his own account, but in the course of his employment as a servant in the business of a master, and that the damage resulted from the servant so employed not having conducted his master's business with due care. In such a case the maxim *respondet superior* prevails, and the master is responsible. Thus, if a servant driving his master's carriage along the highway carelessly runs over a bystander, or if a gamekeeper employed to kill game carelessly fires at a hare so as to shoot a person passing on the ground, or if a workman employed by a builder in building a house negligently throws a stone or brick from a scaffold, and so hurts a passer-by, in all these cases (and instances might be multiplied indefinitely) the person injured has a right to treat the wrongful or careless act as the act of the master. *Qui facit per alium facit per se*. If the master himself had driven his carriage improperly, or fired carelessly, or negligently thrown the stone or brick, he would have been directly responsible, and the law does not permit him to escape liability because the act complained of was not done with his own hand. He is considered as bound to guarantee third persons against all hurt arising from the carelessness of himself or of those acting under his orders in the course of his business. Third persons cannot, or at all events may not, know whether the particular injury complained of was the act of the master or the act of his servant. A person sustaining injury in any of the modes I have suggested has a right to say—I was no party to your carriage being driven along the road, to your shooting near the public highway, or to your being engaged in building a house. If you choose to do, or cause to be done, any of these acts, it is to you, and not to your servants, I must look for redress, if mischief happens to me as their consequence. A large portion of the ordinary acts of life are attended with some risk to third persons, and no one has a right to involve others in risks without their consent. This consideration is alone sufficient to justify the wisdom of the rule which makes the person by whom or by whose orders these risks are incurred responsible to third persons for any ill consequences resulting from want of due skill or caution." But as to the liability of the master to his workmen, my noble and learned friend thus expressed himself—"But do the same principles apply to the case of a workman injured by the want of care of a fellow-workman engaged together in the same work? I think not. When the workman contracts to do work of any particular sort, he knows, or ought to know, to what risks he is exposing himself; he knows, if such be the nature of the risk, that want of care on the part of a fellow-workman may be injurious or fatal to him, and that against such want of care his employer cannot by possibility protect him. If such want of care should occur, and evil is the result, he cannot say that he does not know whether the master or the servant was to blame. He knows that the blame was wholly that of the servant. He cannot say the master need not have engaged in the work at all, for he was party to its being undertaken. Principle, therefore, seems to me opposed to the doctrine that the responsibility of a master for the ill consequences of his servant's carelessness is applicable to the demand made by a fellow-workman in respect of evil resulting from the carelessness of a fellow-workman when engaged in a common work." My lords, I would only add to this statement of the law that I do not think the liability, or non-liability, of the master to his workmen can depend upon the question whether the author of the accident is not, or is, in any technical sense, the fellow-workman, or collaborateur, of the sufferer. In the majority of cases in which accidents have occurred the negligence has, no doubt, been the negligence of a fellow-workman;

but the case of the fellow-workman appears to me to be an example of the rule, and not the rule itself. The rule, as I think, must stand upon higher and broader grounds. As it is said by a distinguished jurist, "*Exempla non restringunt regulam, sed loquuntur de casibus crebrioribus*" ("Donellus de Jure Civ." l. 9, c. 2, n.). The master is not, and cannot be, liable to his servant unless there be negligence on the part of the master in that in which he, the master, has contracted or undertaken with his servant to do. The master has not contracted or undertaken to execute in person the work connected with his business. The result of an obligation on the master personally to execute the work connected with his business, in place of being beneficial, might be disastrous to his servants, for the master might be incompetent personally to perform the work. At all events, a servant may choose for himself between serving a master who does, and a master who does not, attend in person to his business. But what the master is, in my opinion, bound to his servant to do, in the event of his not personally superintending and directing the work, is to select proper and competent persons to do so, and to furnish them with adequate materials and resources for the work. When he has done this, he has, in my opinion, done all that he is bound to do, and if the persons so selected are guilty of negligence, this is not the negligence of the master; and if an accident occurs to a workman to-day in consequence of the negligence of another workman, skilful and competent, who was formerly, but is no longer in the employment of the master, the master is, in my opinion, not liable, although the two workmen cannot technically be described as fellow-workmen. As was said in the case of *Tarrant v. Webb* (25 Law J. N. S. Com. Pl. 263), "Negligence cannot exist if the master does his best to employ competent persons; he cannot warrant the competency of his servants." Applying these observations to the direction of the learned judge to the jury in this case, I think the first error in that direction is that it is pregnant with the suggestion to the jury, that if they found the scaffold to have been finished by Neish before the deceased was engaged to work in the pit, a liability for the accident was thrown upon the respondents, which would not have existed if the deceased had been engaged before the scaffold was finished. This, my lords, was calculated, as I think, to mislead, and appears to have misled the jury. But, my lords, I think there is another objection to the charge of the learned judge. He asks the jury to consider whether the respondents had delegated to Neish their whole power, authority, and duty, in regard to the arrangement or system of ventilation, and also in regard generally to all the underground operations, without control or interference on their part. My lords, I think there is nothing in the evidence which would warrant a question being left to the jury in these terms. The respondents had delegated no power, authority, or duty to Neish, except in the sense in which a master who employs a skilled workman to superintend a portion of his business delegates power, authority, and duty to the workman for that purpose. It was admitted that the respondents gave no specific directions to Neish as to the manner or form in which the scaffold was to be arranged. They told him that the Pyotshaw seam was to be opened, and they left to him the arrangements underground for opening and working it. And the learned judge ought not, as I think, to have suggested to the jury that this could be viewed in any other light than as the ordinary employment by the respondents of a sub-manager or foreman. I think the learned judge ought to have told the jury that if they were of opinion that the respondents exercised due care in selecting proper and competent persons for the work, and furnished them with suitable means and resources to accomplish the work, the respondents were not liable to the appellant for the consequence of the accident. An argument was addressed to your lordships, founded on the 23 & 24 Vict. c. 151, under which the appellant contends that the respondents were absolutely bound by statute to have an adequate amount of ventilation in the pit, and that they were liable as for a breach of this statutory duty. It is sufficient, my lords, to say that no such question is raised on this exception, nor was the learned judge asked to give

any direction to the jury on this score. Your lordships will probably not express any opinion as to whether, in some other stage of this action, such an argument may, or may not, be maintained; and I only notice it at present in order to show that it has not been overlooked. On the whole, I must advise your lordships to dismiss this appeal, with costs.

Lord CRANWORTH having concurred,

Lord CHELMSFORD said—The Lord Ordinary directed the jury that Neish and the deceased could not be fellow-workmen if the system of ventilation in the pit had been completed by Neish before the deceased was engaged to work in the mine. There is a little want of accuracy here in the learned judge's language. If the negligence imputed to Neish is to be taken to have occurred at the time of the completion of the system of ventilation, the deceased could not have then stood in the relation of fellow-workman, for he was not a workman at all. I suppose the learned judge meant to tell the jury that if the negligence which occasioned the accident was finished and completed before the deceased entered the service, the question of fellow-workmen did not arise. But assuming this to have been the direction, it was open to exception. If the platform in the Pyotshaw seam was originally of improper construction for the purpose of ventilation, there was undoubtedly a complete act of negligence on the part of Neish at the moment of its erection. But as he was bound to take care that sufficient ventilation was maintained during the whole time of the workings, as long as he omitted to do so he was guilty of negligence, which continued down to the time of the occurrence of the accident. It was therefore incorrect on the part of the learned judge to confine the act of negligence to the one period of the completion of the system of ventilation, and thereby to conclude the question as to Neish and the deceased being fellow-workmen when the accident happened. But the learned judge put another question to the jury (whether in combination with the previous one, or independently of it, does not clearly appear), which, if found by the jury, would in his opinion have prevented Neish and the deceased from being fellow-workmen. That question was, whether the defenders had delegated to Neish their whole power, authority, and duty in regard to the arrangement or system of ventilation, and also generally in regard to all the underground operations, without control or interference on their part. The words "delegated" and "without interference or control" are ambiguous, or, at all events, misleading expressions. Every master may be said to delegate to his servant the power, authority, and duty of his particular department in the service, without his interference and control, and yet he would be responsible to third persons for the consequences arising from the negligence of that servant in the performance of the duties so intrusted to him. What the learned judge meant to tell the jury was, that if Neish "had the complete power of engaging and dismissing workmen as he pleased, and the ventilation process was entirely left to him without the direction or control of the defenders, he was a superintendent, and not a fellow-workman with the deceased." But if the learned judge had so directed the jury, it would, in my opinion, have been a misdirection. It has certainly been held by Scotch judges of great eminence, that the exoneration of a master from liability for injury arising to one fellow-servant from the negligence of another does not take place where the servant occasioning the injury is placed in superintendence, control, or authority over the others. In the case of *M'Auley v. Brownlie* (22 Dunlop, 975), Lord Deas said, "I think that the foreman was the master's representative, delegated to act for him in his absence, with power to give all the orders which he could have given; and that when the master so delegates his powers and duties in matters affecting life and limb, he must be responsible for the acts and omissions of representatives equally with his own." And in *Somerville v. Gray & Co.* (1 M'Pherson, 768), the Lord President said, "I think there is room for a distinction among different classes of servants acting under the same master, and I do not think that the House of Lords or the courts of England have ever held expressly that there is not. The difficulty is where to draw the line of distinction." But

subsequent cases in England have clearly established that there is no distinction as to the exemption of a common employer from liability to answer for an injury to one of his workmen from the negligence of another in the same employment, in consequence of their being workmen of different classes. It is only necessary to refer for this point to *Wigmore v. Jay* (5 Exchequer, 354), *Gallagher v. Piper* (16 Common Bench, New Series, 669), and especially to *Feltham v. England* (2 Law Reports, Queen's Bench, 33), where the court said—"We think that the foreman was not, in the sense contended for, the representative of the master. The master still retained the control of the establishment, and there was nothing to show that the foreman or manager was other than a fellow-servant of the plaintiff, although he was a servant having greater authority." As was said by Mr. Justice Willes, in *Gallagher v. Piper*, "a foreman is a servant as much as the other servants whose work he superintends." And he added, "We think this case ranges itself with a great number of cases by which it must be considered as conclusively settled that one fellow-servant cannot recover for injuries sustained in their common employment by the negligence of a fellow-servant, unless such fellow-servant is shown to be either an unfit or improper person for the purpose." The learned counsel for the appellants, upon the argument at your lordships' bar, laid an entirely new ground in support of the verdict, founded upon the provisions of the Act of Parliament of the 23 & 24 Vict. c. 151, for the "Regulation and Inspection of Mines." Although the point was not made at the trial, and is not involved in the exception to which the interlocutor appealed from applies, yet as it is within the terms of the issue upon which a new trial may take place, it seems to me, notwithstanding the suggestion of my noble and learned friend on the woolsack, to deserve some notice. By the tenth section of the statute in question, certain general rules are to be observed in every coal mine or colliery by the owner or agent thereof, and amongst them "an adequate amount of ventilation is to be constantly produced in all coal mines or collieries, to dilute and render harmless noxious gases to such an extent that the working places of the pits, levels, and workings, &c., shall, under ordinary circumstances, be in a fit state for working therein." And by the twenty-second section, if any of the rules are neglected or wilfully violated by the owner or agent of the mine, such person shall be liable to a penalty of £20. It was argued that, as the statute has imposed upon the owner the duty of providing proper ventilation, a failure in that respect (no matter to whom attributable) renders the owner responsible for the consequences. In support of this proposition the learned counsel cited the case of *Couch v. Steel* (3 Ellis and Blackburn, 402), which was an action by a seaman against a shipowner for neglecting to keep a proper supply of medicines on board the vessel, whereby the plaintiff's health suffered. Upon demurrer, it was held that although the statute 7 & 8 Vict. c. 112, s. 18, makes it the duty of the shipowner to have medicines on board, and imposes a penalty for a breach of that duty, recoverable by a common informer, a seaman sustaining a private injury for the breach of that statutable duty was entitled to maintain an action to recover damages. In this case there was no question as to the liability of the shipowner, the decision being merely that a person suffering damage from an omission of a duty was not deprived of his remedy because the legislature had attached a penalty to such omission. But the case of *Grey and Wife v. Pullen and Hubble* (5 Best and Smith, 970), which was also cited upon the point, has a more direct application. By the 110th section of the Metropolis Local Management Act, 18 & 19 Vict. c. 120, whenever it is necessary for any person to break up or open the pavement, &c., of any street, he is, with all convenient speed, to complete the work and make good the pavement, and, in the meantime, to fence and guard the place, and light it during the night; and by section 111, if he fail in any of these respects, he is to forfeit £5, and a further sum of 40s. for every day during which the offence continues. The defendant Pullen employed the other defendant Hubble, as a contractor, to make a drain from his premises across a public footpath. The female plaintiff passing along the foot-

path at night fell into a hole or trench over the drain and sustained injury. Mr. Justice Blackburn, who tried the cause, held that there was no evidence to go to the jury that Hubble had acted as the servant of Pullen, but as a contractor for the work, and that Pullen was not within the scope of the above-mentioned sections of the Metropolis Local Management Act, so as to be responsible for the performance of the work. A verdict was found against Hubble, with £65 damages, the judge directing a verdict to be entered for the defendant Pullen, reserving leave to move to enter the verdict against him also. Upon this motion being made, the Court of Queen's Bench unanimously refused the rule, holding that the statute did not take the case out of the common doctrine that, if a person in the exercise of a right employs a contractor to do work, and the contractor is guilty of negligence in doing it, from which damage results, he, and not the employer, is liable. The Court of Exchequer Chamber, however, overruled the Court of Queen's Bench, and held that Pullen was liable to the plaintiff for the injury, upon the ground that "a duty was implied in the grant of the power to open the drain in the highway in section 79 of the Act, and was expressed in section 110, and that the statutable duty was created absolutely, and not by section 111, imposing a penalty, to be enforced solely by enforcing the penalty, and that the penalty imposed by section 111 was a cumulative remedy." I must confess that this reasoning is not at all satisfactory to my mind. The statutable duty is no doubt created absolutely for the purposes of the Act, but it is a duty which, if unperformed, can only be enforced by the penalty; and this, for the protection of the public, is to be recovered against the owner or occupier who causes the work to be done. If an individual sustains an injury in consequence of the work being imperfectly or improperly performed, a civil liability is not imposed upon the owner, if without the statutable obligation he would not have been liable. The remedy is in one sense cumulative, because the imposition of the penalty by statute does not take away the civil remedy; but the two proceedings have totally different objects—the one to punish an offence, the other to redress an injury. For the sake of the public, it may be right to make a person liable for acts which another has done on his account; but it would be a violation of principle to make him civilly responsible for such acts where he is in no legal sense a principal or master of the person doing them. I think, therefore, that the statute of the 23 & 24 Vict. c. 151, cannot have the effect of giving to the pursuers a right of action which they would not have had without it, and that the defence of the deceased being a fellow-workman with Neish is open to the defenders notwithstanding the statute. The interlocutor appealed from ought, in my opinion, to be affirmed.

Lord COLONSBAY.—Cases of this class have of late years been frequent, and the law applicable to them has been much discussed in both ends of the island, and has been considerably matured by those discussions. The constantly increasing scale on which mining and manufacturing establishments are conducted, by reason of new combinations and applications of capital and industry, has necessarily called into existence extended organizations for management, more gradations of servants, more separation or distribution of duties, more delegation of authority, and less of personal presence or interference of the master. The same personal superintendence and supervision by owners or masters, common and beneficial in some minor establishments, is in many cases unattainable, and, even if attainable, would not be beneficial. The principles of the law, however, have sufficient elasticity to enable them to be applied, notwithstanding such progressive changes in the manner of conducting business. I hold it to be quite clear that the liability of a master for injury done, by the fault or negligence of his servant, falls to be dealt with on different principles where the sufferer is a stranger, and where the sufferer is a fellow-servant engaged in the same common employment. The distinction was fully recognized by Lord Cranworth, and effect was given to it by this house in the case of the Bartonshill Company. Whether the present case does or does not belong to the latter class, it certainly does not belong to the former class. The deceased was not a stranger—he was

at the time he received the injury a workman in the employment of the defenders in their coal mine. Neish was also in their employment there. If it is not alleged that there was any personal fault or neglect on the part of the master, on what principle does liability attach to him? Does such liability flow from the nature of the contract of service under which the deceased was working? I think that there are duties incumbent on masters, with reference to the safety of labourers in mines and factories, on the fulfilment of which the labourers are entitled to rely, and for the failure in which the master may be responsible. A total neglect to provide any system of ventilation for the mine may be of that character. Culpable negligence in supervision, if the master takes the supervision on himself, or where he devolves it on others; the heedless selection of unskilful or incompetent persons for the duty, or the failure to provide, or supply the means of providing, proper machinery or materials, may furnish grounds of liability; and there may be other duties, varying according to the nature of the employment, wherein, if the master fails, he may be responsible. But on the other hand, there are risks incident to occupations more or less hazardous, and of which the labourer who engages in any such occupation takes his chance. It is eminently so in regard to mining operations. There are perils of the pit as well as of the other deep—and one of those perils is the risk of the consequences that may, even in the best-regulated pits, result from the carelessness or recklessness or other fault of one or more of those persons composing the organized body engaged in working the mine. The master does not impliedly insure the workman against such perils. Is the fault attributed to Neish one of that character? I think it must be so regarded unless there was something in the relation of Neish to the defenders, or to the deceased, which deprives it of that character. It is not alleged that the general system of ventilation of the pit, as it had existed anterior to the erection of the scaffold, was not good, or that Neish was not a fit man to be placed in the position he occupied. In neither of these respects was there any fault or negligence on the part of the defenders; nor is it alleged that in any other respect there was personal fault on their part. But it is said that Neish was not a fellow-workman of the deceased—that he was in some sense and to some effect a representative of the defenders, holding delegated powers from them, and that they are therefore liable. Now, I agree with what has been said as to the terms “fellow-workman” and collaborateur.” They are not expressions well suited to indicate the relation on which the liability or non-liability of a master depends, especially with reference to the great systems of organization that now exist. And these expressions, if taken in a strict or limited sense, are calculated to mislead. The same may be said of such words as “foreman” or “manager.” We must look to the functions the party discharges, and his position in the organism of the force employed, and of which he forms a constituent part. Nor is it of any consequence that the position he occupies in such organism implies some special authority, or duty, or charge—for that is of the essence of such organizations—as for instance in this case, if Bryce is admitted to have been within the principle of a fellow-workman, although he was foreman and underground manager, and had the immediate charge of constructing the scaffold, and was primarily to blame for its defects, if any, Neish was one step higher, and may have been in fault for not detecting Bryce’s error; but yet Neish was subordinate to a still higher servant, Jack. They were all links in the same chain. If the master was responsible for injury done to Wilson through the fault of Neish, on the ground that, strictly speaking, they were not fellow-labourers, he would on the same ground have been liable for injury done to Neish through the fault of Wilson. Now the direction of the learned judge, with reference to the circumstances of this case, appears to me to have been objectionable for these reasons—First, it deals apparently with the alleged defect in the scaffold, as if it was a defect in the general arrangement or system of ventilation of the pit for which, in certain views, the defendant might be regarded as liable; whereas, it was a defect in the construction of a temporary structure, erected by order of Neish for certain work-

ing operations, whereby the free action of a good system of ventilation was temporarily interfered with, which raised a totally different question for the consideration of the jury in reference to the liability of the defendant for the fault of Neish. But the distinction does not appear to have been adverted to. Secondly, it suggests to the jury that if the faulty scaffold was completed before Wilson entered into the employ of the defenders, a liability was imposed on the defenders which would not otherwise have existed, inasmuch as in that case Wilson and Neish could in no view have been fellow-workmen at the time when the fault was committed by Neish. But if it was the duty of Neish to provide for the passage of air upwards in the shaft, that duty did not cease with the erection of the scaffold, but continued while the scaffold remained, and he was in fault so long as that duty was not performed. It was not merely the erection of the scaffold on Saturday, but the maintenance of it in a defective state until Tuesday morning, that caused the injury, if it was really caused by the defective construction of the scaffold; and consequently there was no room for the suggested disconnection of Wilson and Neish as fellow-workmen. Thirdly, the direction points the attention of the jury to the question whether Wilson and Neish stood in the relation of fellow-workmen, engaged in the same common employment, as the test of non-liability, without sufficient explanation of what constituted that relation; and, in particular, without explaining that diversity of duties and gradation of authority are not inconsistent with that relation, and without referring to the effect which might be produced on the liability of the master by a careful selection of proper persons to take charge of different departments in the working of the mine. On the whole, I am disposed to adopt the words of one of the learned judges in the court below, who has said that the case had been "imperfectly and inadequately stated by the judge, and so stated as tending to mislead the jury." At the same time I am not surprised that the learned judge who tried the case should have been embarrassed by the rather unsatisfactory and somewhat conflicting state of the authorities and decisions on a branch of law which has only lately approached maturity. A point was made on the statute of the 23 & 24 Vict., chapter 151. I am not disposed to pronounce any opinion in reference to the effect of that statute. I think there may be questions of considerable nicety arising upon it. It was a public statute, passed for the avowed purpose of giving greater safety to workmen in mines; it imposed duties upon the owners of mines; and a question may be raised whether workmen engaging in the service of a mine-owner may not be entitled to rely upon such duties being performed as being implied in the contract of service. That is a point upon which I do not wish to express an opinion, because the subject we are now dealing with is apart altogether from any such question.

Interlocutor affirmed, and appeal dismissed, with costs.

Counsel for the Appellants—Quin, Q.C., and Strachan & Junner. Agents—Shaen & Roscoe, London; Thomas White, Edinburgh.

Counsel for the Respondents—Sir R. Palmer, Q.C.; and Young & Shand. Agents—James Dodds, London; Burns & Alison, Glasgow.

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TO
THE HONOURABLE LORD ORMIDALE,
ONE OF THE SENATORS OF THE COLLEGE OF JUSTICE
IN SCOTLAND,

This Work is Dedicated

AS A MARK OF RESPECT

FOR HIS CHARACTER AS A MAN, HIS INTEGRITY, LEARNING, AND
INDEPENDENCE AS A JUDGE, AND HIS JUST APPRECIATION
OF THE WORKING CLASSES OF THIS COUNTRY.

P R E F A C E.

To write a book which would give, within a moderate compass and at a reasonable price, such a statement of the law relative to the rights and obligations of MASTER and SERVANT, as would serve the wants of the lawyer, and at the same time answer the purposes of a popular guide, does not seem to have occurred to any of those members of the higher walks of the profession, whose superior learning, greater leisure, and more extensive opportunities for obtaining information, would have given it additional value. Had there been any indication that a gentleman so qualified would undertake this task, the present work would not have been written.

Relying upon the indulgence of a profession which is never harsh to its junior members, and trusting to that spirit of fairness which the press always manifests towards any man who strives to contribute something, however humble, to the common stock of useful knowledge, the author has ventured upon a task which some experience and study gave him reason to believe he could fairly accomplish. He is not vain enough, however, to think that he has written anything to instruct the members of his own profession; but if the results of his investigation of the law of France, as well as of his examination of the numerous Acts of our own Parliaments relative to Industrial Legislation, coupled with the collection of Decisions embodied in the work, shall diminish the labour of others, and enable them with more facility to find what they might otherwise lose much valuable time in searching for, his intention as regards them will be accomplished.

While it is, therefore, hoped that the book will not prove unacceptable to lawyers, the author would be disappointed if it did not also fulfil the other and indeed the chief purpose for which it was written, viz., to enable masters and workmen to understand the law which regulates their relations towards each other, and to form Boards or Councils of Conciliation and Arbitration for the settlement of their disputes and differences. He has given such an outline of procedure, and prepared such forms as may, he trusts, render it an easy matter for both parties to put the law in practice for themselves.

Dealing, as it does, with imperial legislation, and allowing the common law of each of the countries to speak for itself, through its own decisions, the book ought to be equally useful in England, Scotland, and Ireland; and in order that it may fairly claim to be so, the proof sheets have been gone over by A. K. ROLLIT, Esq., LL.D., solicitor, Hull, to whom the author is obliged for many valuable suggestions. Thanks are also due to Dr. WALLER, of Dublin, for cases decided in Ireland. The author is indebted to ALEXANDER GLEN, Esq., Solicitor, Glasgow, not only for going over the proof sheets, but for the preparation of the index of subjects. He begs further to acknowledge his obligations to the gentlemen of the French consulate in Glasgow, particularly to M. LOUIS THIBAUDIER. One of these gentlemen has the advantage of a professional knowledge of the law of his native country; and, with the courtesy common to all Frenchmen, he cheerfully undertook to read over that part of the work which deals with the law of France.

The author trusts that his attempt to treat the law of Master and Servant upon the broad imperial basis on which the laws of the United Kingdom must sooner or later be placed, will meet with that indulgence which a first essay may fairly anticipate from those whose province it is to sit in judgment upon the claims of authorship, and that it may provoke abler men to devote at least a portion of the talent and learning which they employ in building up separate systems of municipal jurisprudence, to the duty of assimilating the laws of the three kingdoms—to demonstrating the identity of the principles to be found in each, disguised by the garb of unfamiliar phraseology, and to educating from the *Constitutiones antea confusas* (which may here signify a “previous confusion of terms,”) that *luculentam consonantiam*—that “obvious consistency”—which it was the boast of Justinian he had introduced into the Roman law; that the sovereign of these realms may also be enabled to employ, but in a more precise and definite sense, the language of the same royal reformer, *Omnes vero populi legibus tam a nobis promulgatis quam compositis reguntur*, which, it is to be hoped, may soon be interpreted as meaning that “all the people of these kingdoms are governed by one and the same code, founded upon imperial legislation.”

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" c. 92, s. 16, . . .	194, 210, 213	1853, " June 1, . . .	9, 14
" c. 98, . . .	93, 106, 194	1864, " May 25, . . .	151
16 & 17 Vict. c. 104, . . .	128, 172	1867, " July 22, . . .	17
17 & 18 Vict. c. 104, . . .	1		
18 & 19 Vict. c. 108, . . .	178	IV. LAWS AND ORDONNANCES PROMULGATED IN BELGIUM.	
19 & 20 Vict. c. 120, . . .	224	1842, law of, . . .	18
" c. 46, . . .	142	1843, " . . .	18
" c. 48, s. 4, . . .	34	1845, " . . .	18

TRADES AND OCCUPATIONS AFFECTED BY ACTS OF PARLIAMENT.

The Truck Act, 1 & 2 Will. IV. c. 37, post, p. 165, applies to most trades. See sect. 19.

ARTIFICERS, HANDICRAFTSMEN, MINERS, COLLIERS, KEELMEN, PITMEN, GLASSMEN,
POTTERS, LABOURERS, AND SERVANTS IN HUSBANDRY.

20 Geo. II. c. 19, *post*, p. 66.

6 Geo. III. c. 25, *post*, p. 70.

4 Geo. IV. c. 84, *post*, p. 73.

BALLASTMEN (except Trinity Ballastmen). See *Bargemen*.

BARGEMEN, LIGHTERMEN, WATERMEN, BALLASTMEN (except Trinity Ballastmen),
COALWHIPPERS, COAL PORTERS, SAILORS, LUMPERS, RIGGERS, SHIPWRIGHTS,
CAULKERS, or other labourers who work for hire in and upon the River Thames, or the
docks, creeks, wharves, quays or places adjacent, not being in the city of London or the
liberties thereof, and the Owners, Masters or Commanders of Vessels, or their Agents,
on the said river, or the docks or creeks thereunto adjoining, or the Owners, Wharfingers
or Occupiers of such wharves or quays, or their Agents or other Employers; respecting
wages or money due to such labourers for work or loss of time, whether the same persons
be employed for any certain time or in any other manner.

2 & 3 Vict. c. 71, s. 37.

BONE AND THREAD LACE MANUFACTURERS.

19 Geo. III. c. 49, ss. 3, 4 (rest repealed by 1 & 2 Will. IV. c. 36).

BOOKBINDERS. See *Factories*.

BOOT AND SHOEMAKERS. See *Leather and Shoemakers*.

BREECHES MAKERS. See *Leather and Tailors*.

CALICO PRINTERS.

6 Geo. III. c. 25, *post*, p. 70.

4 Geo. IV. c. 84, *post*, p. 73.

CAPMAKERS. See *Hatmakers*.

CARTRIDGE-MAKERS. See *Factories*.

CAULKERS. See *Bargemen*.

CHIMNEYSWEEPS. 3 & 4 Vict. c. 85.

CLOCK AND WATCHMAKERS. 27 Geo. II. c. 7.

CLOTHIERS.

7 Jac. I. c. 7.

14 Geo. III. c. 25.

And see *Woolen Manufacturers*.

COAL MINES INSPECTION. 18 & 19 Vict. c. 108, *et seq.*, *post*, p. 178.

COAL PORTELS. See *Bargemen*.

COALWHIPPERS.

14 & 15 Vict. c. 78, s. 24.

17 & 18 Vict. c. 104, s. 188.

And see *Bargemen*.

COLLIERIES. 5 & 6 Vict. c. 99, *post*, p. 178.

COLLIERS. See *Artificers, Miners*, and 40 Geo. III. c. 77 (except sects. 1 & 5, which
were repealed by 7 & 8 Geo. IV. c. 27, and other provisions substituted by) 7 & 8 Geo.
IV. c. 29, s. 37, and c. 30, s. 6, *post*, p. 178.

xviii TRADES AFFECTED BY ACTS OF PARLIAMENT.

COTTON MANUFACTORIES. See *Factories, Hosiery*, and 1 Anne, st. 2, c. 18 (made perpetual 9 Anne, c. 80).

- 18 Geo. II. c. 8.
- 22 Geo. II. c. 27, *post*, p. 95.
- 14 Geo. III. c. 44.
- 17 Geo. III. c. 56. See Appendix, p. 318.

DYERS AND HOT-PRESSERS.

- 22 Geo. II. c. 27. (Sect. 12 was partly repealed by 6 Geo. IV. c. 129, *post*, p. 145, and 9 Geo. IV. c. 31; and as to wages by 1 & 2 Will. IV. c. 37, *post*, p. 349.)

17 Geo. III. c. 56; see sect. 17, Appendix, p. 318. (This Act was not repealed as to Dyers by 6 & 7 Vict. c. 40. See *R. v. Button*, 11 Q. B. 941.)

EARTHENWARE-MAKERS. See *Factories*.

FACTORIES.

- 42 Geo. III. c. 73.
- 3 & 4 Will. IV. c. 103.
- 4 & 5 Will. IV. c. 1.
- 7 & 8 Vict. c. 15.
- 10 & 11 Vict. c. 29.
- 13 & 14 Vict. c. 24.
- 16 & 17 Vict. c. 104.
- 19 & 20 Vict. c. 38.
- 23 & 24 Vict. c. 78.
- 26 & 27 Vict. c. 33.
- 27 & 28 Vict. c. 48, *post*, p. 174.
- 30 & 31 Vict. c. 103, *post*, p. 175.

Note.—By this Act, viz., “The Factory Extension Act, 1867,” it is declared that the word “FACTORY” shall mean:—

1. Any blast furnace or other furnace or premises in or on which the process of smelting or otherwise obtaining any metal from the ores is carried on (which furnace or premises are hereinafter referred to as a blast furnace):
2. Any copper mill:
3. Any mill, forge, or other premises in or on which any process is carried on for converting iron into malleable iron, steel, or tin plate, or for otherwise making or converting steel (which mills, forges, and other premises are hereinafter referred to as iron mills):
4. Iron foundries, copper foundries, brass foundries, and other premises or places in which the process of founding or casting any metal is carried on:
5. Any premises in which steam, water, or other mechanical power is used for moving machinery employed—
 - (a.) In the manufacture of machinery:
 - (b.) In the manufacture of any article of metal not being machinery:
 - (c.) In the manufacture of india-rubber or gutta-percha, or articles made wholly or partly of india-rubber or gutta-percha:
6. Any premises in which any of the following manufactures or processes are carried on: namely,
 - (a.) Paper manufacture:
 - (b.) Glass manufacture:
 - (c.) Tobacco manufacture:
 - (d.) Letterpress printing:
 - (e.) Bookbinding:
7. Any premises, whether adjoining or separate, in the same occupation, situate in the same city, town, parish, or place, and constituting one trade establishment, in, on, or within the precincts of which fifty or more persons are employed in any manufacturing process:

And every part of a factory shall be deemed to be a factory, except such part, if any, as is used exclusively as a dwelling:

“MANUFACTURING PROCESS” shall mean any manual labour exercised by way of trade or for purposes of gain in or incidental to the making any article or part of an article, or in or incidental to the altering, repairing, ornamenting, finishing, or otherwise adapting for sale any article.

30 & 31 Vict. c. 146, *post*, p. 175.

FELT. See *Hatmakers*.

FLAX.

22 Geo. II. c. 27, *post*, p. 95.
14 Geo. III. c. 44.
17 Geo. III. c. 56. Appendix, p. 318.

And see *Factoriss, Hosiery, Ropeworks*.

FUR. } 22 Geo. II. c. 27, *post*, p. 95.
FUSTIAN. } 17 Geo. III. c. 56. Appendix, p. 318. See *Factories*.
GLASSMEN. See *Artificers*. See also *Factories*.

GLOVEMAKERS. See *Hosiery and Leather*.

HAIR. See *Mohair*.

HANDICRAFTSMEN. See *Artificers*.

HATMAKERS.

22 Geo. II. c. 27, *post*, p. 95.
17 Geo. III. c. 11.
17 Geo. III. c. 55.
17 Geo. III. c. 56. Appendix, p. 318.

HEMP, MANUFACTURERS OF HEMP, OR HEMP MIXED WITH WOOL, FUR, FLAX, MOHAIR, OR SILK.

22 Geo. II. c. 27, *post*, p. 95.
14 Geo. III. c. 44.
17 Geo. III. c. 56. Appendix, p. 318.

And see *Factories, Hosiery, Ropeworks*.

HOSIERY. Persons engaged in the manufacture of woollen, worsted, linen, cotton, flax, mohair, or silk materials in, on, or by the stocking frame, warp machine, or any other machine employed in the manufacture of frame-work, knitted or woollen fabrics; and every trade, occupation, operation, or employment whatsoever connected with or incidental to the manufacture of stockings, gloves, and other articles of hosiery.

6 & 7 Vict. c. 40. Appendix, p. 369.

Tickets of work (pursuant to 5 Geo. IV. c. 96, s. 18), 8 & 9 Vict. c. 77. Appendix, p. 381.

HOT-PRESSERS. See *Dyers*.

HUSBANDRY, SERVANTS IN. See *Artificers*.

Note.—1 & 2 Will. IV. c. 87, does not apply to servants in husbandry: see sect. 20.

IRON.

22 Geo. II. c. 27, *post*, p. 95.
17 Geo. III. c. 56. Appendix, p. 318.

JAPANNED GOODS.

1 & 2 Will. IV. c. 37.

JUTE. See *Ropeworks*.

KEELMEN.

LABOURERS. } See *Artificers, Bargemen*.

LACE. See *Bone and Thread Lace Manufacturers, Factories*.

LEATHER. *Manufacturers of Leather Breeches, Gloves, &c.*

1 Anne, stat. 2, c. 18, made perpetual 9 Anne, c. 30.
18 Geo. II. c. 8, s. 4.
22 Geo. II. c. 27, *post*, p. 95.
17 Geo. III. c. 56. Appendix, p. 318.

LETTERPRESS PRINTERS. See *Factories*.

LIGHTERMEN. See *Bargemen*.

Thames, 22 & 23 Vict. c. 133.

LINEN.

22 Geo. II. c. 27.
14 Geo. III. c. 44.
15 Geo. III. c. 14.
17 Geo. III. c. 56. Appendix, p. 318.
22 Geo. III. c. 40.
6 & 7 Vict. c. 40. Appendix, p. 369.

And see *Factory, Hosiery*.

LUCIFER MATCH MAKERS. See *Factories*.

XX TRADES AFFECTED BY ACTS OF PARLIAMENT.

LUMPERS. See *Bargemen*.

METALLIC WORKERS. See *Factories*.

MILLS. See *Factory, Silk*.

MINERS. See *Artificers, Colliers*.

As to *Women and Children* employed in Mines, 5 & 6 Vict. c. 99,
et seq., post, p. 176.

" " In Cornwall, 2 & 3 Vict. c. 58, s. 1.

" " In Devon, 18 & 19 Vict. c. 32, s. 28.

MOHAIR. See *Hemp, Hosiery, Linen*.

PAPERMAKERS. 36 Geo. III. c. 111 was repealed 6 Geo. IV. c. 129, but see *Factories*.

PERCUSSION CAP MAKERS. See *Factories*.

PITMEN. See *Artificers, Colliers, Miners, Timmen*.

POTTERS. See *Artificers*.

PRINTWORKS, EMPLOYMENT OF WOMEN AND CHILDREN.

8 & 9 Vict. c. 29.

9 & 10 Vict. c. 18.

10 & 11 Vict. c. 70, et seq., post, pp. 174, 175.

RIGGERS. See *Bargemen*.

ROPEWORKS. Certain Ropeworks declared not to be within the Factory Acts.

9 & 10 Vict. c. 40.

SAILORS.

SHIPWRIGHTS. } See *Bargemen*.

SHOEMAKERS, JOURNEYMEN.

9 Geo. I. c. 27.

SILK. See *Factory, Hosiery, and*

14 & 15 Car. II. c. 15. }

20 Car. II. c. 6. }

8 & 9 Will. III. c. 36. }

(The 13 Geo. II. c. 68; 32 Geo. III. c. 44, and 51 Geo. III. c. 7, were
repealed, 5 Geo. IV. c. 66.)

22 Geo. II. c. 27.

14 Geo. III. c. 44.

17 Geo. III. c. 56. Appendix, p. 318.

" WEAVER'S TICKET OF WORK (pursuant to 5 Geo. IV. c. 96, s. 18).

8 & 9 Vict. c. 128. Appendix, pp. 330, 331.

STEEL. See *Iron*.

STOCKINGS. See *Hosiery*.

TAILORS. 7 Geo. I. stat. 1, c. 12, ss. 4, 6, 9, 10. Rest repealed, 6 Geo. IV. c. 129.

Appendix, p. 340.

TINNERS IN THE STANNERIES.

20 Geo. II. c. 19. (See 27 Geo. II. c. 6)

4 Geo. IV. c. 34.

TOBACCO MANUFACTURERS. See *Factories*.

TOW. See *Hemp and Rope Works*.

WATCHMAKERS. See *Clockmakers*.

WATERMEN, THAMES. See *Bargemen*.

22 & 23 Vict. c. 133.

WOOLLEN AND WORSTED MANUFACTURERS. See *Clothiers, Factory, Hosiery*.

12 Geo. I. c. 34, ss. 2 and 5.

(13 Geo. I. c. 23, was repealed, 3 & 4 Will. IV. c. 28.)

22 Geo. II. c. 27.

14 Geo. III. c. 44.

15 Geo. III. c. 14.

17 Geo. III. c. 11, in the counties of York, Lancaster, and Cheeshire.

17 Geo. III. c. 56. Appendix, p. 318.

22 Geo. III. c. 40.

6 & 7 Vict. c. 40. Appendix, p. 369.

